

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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4 _____
5 UNITED STATES OF AMERICA

6 Plaintiff

7 vs. Criminal Action No. 01-06ERIE

8 DANIEL J. LEVETO

9 Defendant
10 _____

11 PROCEEDINGS

12 Transcript of Suppression Hearing commencing on
13 Thursday, October 28, 2004, United States District Court,
14 Erie, Pennsylvania, before Honorable Maurice B. Cohill, Jr.,
15 District Judge.

16 APPEARANCES:

17 For the Government: For the Department of Justice
18 By: Rita Calvin, Esq.
19 By: Thomas Voracek, Esq.

20 For the Defendant: Pro Se
 Stephen Misko, Esq.

 Reported by:
 Michael D. Powers, RMR
 Official Court Reporter
 1015-A USPO & Courthouse
 Pittsburgh, Pennsylvania 15219

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1 P R O C E E D I N G S

2 (Court convened on Thursday, October 28, 2004, at 9:45 a.m.)

3 THE COURT: Good morning. Be seated, please.

4 MR. VORACEK: Good morning, Your Honor.

5 MS. CALVIN: Good morning, Your Honor.

6 MR. LEVETO: Good morning, Your Honor.

7 MR. MISKO: Good morning, Your Honor.

8 THE COURT: We have a motion to suppress evidence

9 filed by Daniel Leveto in this case and this is the time

10 scheduled for a hearing on that matter.

11 So, the way we usually do it where there is a
12 motion to suppress, we have the government go forward to
13 present their witnesses and then permit, of course,
14 cross-examination of any of those witnesses called by the
15 government. So, with that, we'll proceed.

16 MR. VORACEK: Your Honor, Thomas Voracek and Rita
17 Calvin appearing for the United States Department of Justice.

18 Your Honor, the United States will call four
19 witnesses; Robert Lapina, Richard Adams, Thomas Demko and
20 Frank Falvo. Those are witnesses also that Mr. Leveto has
21 requested that the government provide to him. Those
22 witnesses are in the courtroom, but we don't know if
23 Mr. Leveto is going to call any other witnesses in this case.

24 So we would ask that the Court -- we do invoke the
25 rule to exclude all witnesses from the courtroom.

4

1 THE COURT: Sequestration. Sure. Are you going to
2 call any witnesses that are in the courtroom, Mr. Leveto?

3 MR. LEVETO: No, I am not, Your Honor.

4 THE COURT: Okay. Then we will ask your first

5 witness to remain and the other three will please just be

6 available outside somewhere.

7 MR. VORACEK: The United States calls Robert Lapina

8 to the witness stand.

9 THE COURT: You can come forward and be sworn,

10 please.

11 THE CLERK: Can you raise your right hand?

12 * * * * *

13 DANIEL LAPINA, having first been duly sworn,

14 testified as follows:

15 THE COURT: Have a seat up there, please, give us

16 your name and spell your last name.

17 THE WITNESS: My name is Robert. A. Lapina. Last

18 name is spelled L-a-p-i-n-a.

19 THE COURT: Thank you.

20 DIRECT EXAMINATION

21 BY MR. VORACEK:

22 Q Mr. Lapina, are you employed?

23 A Yes, I am.

24 Q Where are you employed?

25 A Currently, I am working for the U.S. Postal Service,

1 Office of Inspector General, in Pittsburgh.

2 Q What is your position there?

3 A I am a supervisor supervising a group of Special Agents
4 who investigate alleged violations of fraud, waste abuse and
5 mismanagement in the Postal Service.

6 Q How long have you been so employed?

7 A Since March of this year.

8 Q Prior to your current occupation, were you also
9 employed?

10 A Yes.

11 Q And where were you employed?

12 A Internal Revenue Service Criminal Investigation
13 Division.

14 Q And what was your position there?

15 A I was employed there for over sixteen years in both
16 capacities as Special Agent and a supervisor.

17 Q And how long were you a Special Agent with the Internal
18 Revenue Service Criminal Investigation Division?

19 A Total over sixteen years.

20 Q What were some of your duties as a Special Agent?

21 A My duties basically were to investigate alleged criminal

22 violations of the Internal Revenue Code and related offenses.

23 Q And criminal violations of the Internal Revenue Code,

24 have they been codified?

25 A Yes.

6

1 Q And where is that found?

2 A United States Code, Title 26.

3 Q Are you familiar with that code?

4 A Yes.

5 Q Did you have any prior training or receive any training

6 as a Special Agent?

7 A When I was hired as a Special Agent back in 1987, I

8 immediately was sent to training at the Federal Law

9 Enforcement Training Center in Brunswick, Georgia, received

10 tax criminal law training, Special Agent training.

11 Q Did you have any other additional education or training

12 while you were a Special Agent?

13 A Yes. Sure. On-the-job training, continued professional

14 education type situations.

15 Q Did you have any training regarding the drafting of
16 affidavits to be used for a search warrant?

17 A Yes. It's a part of your training at the Criminal
18 Federal Law Enforcement Training Center in the criminal end
19 of it as far as the criminal investigative training.

20 One of your training assignments is basically
21 drafting affidavits articulating probable cause for search
22 warrants to be issued, executing the search warrant and also
23 testifying in court regarding to the execution of the
24 warrant.

25 Q Prior to May of 1996, did you have any previous

7

1 opportunities for preparing affidavits for search warrants?

2 A Yes, I did. I prepared an affidavit for a search
3 warrant back in 1992 here in Erie.

4 Q Any others?

5 A That's it.

6 Q How about prior to May of 1996, did you have any
7 opportunities where you were involved in the execution of
8 warrants?

9 A Yes. On numerous occasions, I participated either as a

10 team leader or as a member of a search warrant team.

11 Q Is there an IRS procedure relating to any internal

12 approval of search warrants?

13 A To my knowledge, you draft an affidavit where you

14 believe you have probable cause to obtain a search warrant.

15 That affidavit has to be reviewed by your supervisor. Then

16 it has to be reviewed and approved by District Council before

17 it could be sent to the United States Attorney's Office for

18 finalization.

19 Q Are you present at the time that the search warrant is

20 approved? Is that the normal process?

21 A Approved by superiors and District Council.

22 Q Approved by the magistrate?

23 A Oh, yes. Yes. Basically, it would be my job to go down

24 and pick up the information from the U.S. Attorney's Office,

25 the affidavit, the warrants, and the U.S. Attorney's Office

8

1 would schedule a meeting with the magistrate for me to take

2 the information over.

3 Q Now, Agent Lapina, as part of your function as an IRS

4 Special Agent, are you familiar with how to construct an
5 individual's income?

6 A Yes. There is a few different ways which we use to
7 reconstruct an individual's income to show that violation has
8 been committed, to show what the true taxable income was, any
9 unreported income and additional tax, and that would be
10 either direct method of proof or indirect method of proof.

11 Q What are some direct methods of proof?

12 A One would be the specific items method of proof where
13 you actually have specific items of unreported income, false
14 expenses, et cetera, that you can prove specifically that
15 were omitted from the tax return.

16 Q And by specific items, do you mean like the actual check
17 or something that may have been -- that you may consider to
18 be income?

19 A Right. Or, for instance, somebody received wages from
20 multiple employers and specifically you can show that the
21 wages from the one employer was not reported on the tax
22 return.

23 Q Agent Lapina, you also indicated that an individual's
24 income could also be established by an indirect method of

25 proof. Could you please explain that?

9

1 A Yeah. Indirect methods of proof that we would employ
2 would be -- for example, it would be bank deposits method of
3 proof, net worth and expenditures method of proof.

4 And what you are saying there, as far as indirect
5 methods go is, basically you have to be able to reconstruct
6 an individual's income for a number of years, establish a
7 good starting point for your first year where there is an
8 alleged violation and show that there was increases to an
9 individual's net worth, increases to the expenditures and
10 basically substantiate that that was due to unreported
11 taxable income. You have to eliminate any nontaxable sources
12 that may, you know, attribute to that increase.

13 Q Now, a tax year for an individual begins on what date?

14 A January 1st.

15 Q Is it then important, as part of the indirect method, to
16 establish, let's say, what an individual's financial picture
17 looks like around January 1st?

18 A You have to show, going into January 1st of that first
19 recommended prosecution year, that you have a good net worth

20 computation because if it is flawed, then it can flaw the
21 rest of the computations for the subsequent years.

22 Q So, is it fair to say you need to establish what an
23 individual's assets are on December 31st of a particular
24 year?

25 A Correct.

10

1 Q And then you also -- is it my understanding from your
2 testimony that you need to establish an individual's net
3 worth based on assets at the end of the following year on
4 December 31st?

5 A Assets and liabilities.

6 Q And then, based upon looking at those figures, can you
7 come to some determination over what an individual's income
8 would have been during that year?

9 A Well, you have to take a look at the assets and the
10 liabilities and what the resulting net worth would be, and
11 then also any personal non-deductible expenditures have to be
12 added on there to show the total picture as far as any -- if
13 there are any amounts of unreported income which would be

14 attributed as taxable sources.

15 Q Now, as a Special Agent for the Internal Revenue

16 Service, was it part of your duties to conduct an

17 investigation of Daniel Leveto?

18 A Yes, it was.

19 Q Did you initiate that investigation yourself, sir?

20 A With the approval of my supervisor.

21 Q Was the case assigned to you?

22 A Yes.

23 Q Had there been any investigation done of Dr. Leveto

24 prior to the time that you received the case?

25 A No criminal investigation had been conducted prior to my

11

1 involvement with the case.

2 Q Were you provided with any information at all regarding

3 any other matters concerning Dr. Leveto at the time you

4 received the case?

5 A Well, at the time, I believe it was late 1994, there

6 were a couple different things that come into play here.

7 One. The Civil Section revenue agent of the IRS

8 here in Erie had been assigned basically to audit

9 Dr. Leveto's tax returns and felt that the information that
10 was included in the assignment basically may warrant a
11 criminal investigation rather than a civil examination. And
12 at that point, he called me and asked me what I thought of
13 the information.

14 At the same time that happened, I also got
15 information in from a witness relative to some of the
16 activities of Daniel Leveto.

17 Q When was the case officially referred to the IRS CID, do
18 you recall?

19 A I believe it was late 1994 or possibly even early 1995,
20 as far as I recall.

21 Q After you received the case, what investigative steps
22 did you take, if any?

23 A Well, one of the first things I would have done was,
24 would be to look and -- order and look at Dan Leveto's income
25 tax returns for a number of years. I believe I had them for,

1 like, the years in late eighties going all the way up through
2 that time period where the investigation was initiated,

3 basically looking for anything on those returns which would

4 indicate substantial drop off in income, any indication on

5 there that, you know, there was unreported tax or, you know,

6 things didn't look quite appropriate.

7 Q And you did do that then for Dr. Leveto?

8 A Yes.

9 Q Did you take any other types of investigative steps at

10 that time?

11 A What we normally do when you get a case assigned, you

12 check public records to determine what assets and property an

13 individual may have. Contact the Department of Motor

14 Vehicles to determine what, if any, vehicles that they had.

15 Check NCIC and other internal databases to determine if the

16 individual has a criminal record; anything of that nature.

17 Q Did you attempt to corroborate the information that you

18 noticed on the tax returns filed by Dr. Leveto and some of

19 the assets that you just mentioned?

20 A Well, like I said, I had received information from an

21 individual named Mike Kalustian at the same time period, and

22 Mr. Kalustian was providing me information based upon

23 meetings and conversations he had with Daniel Leveto which

24 were indicative to me that Dr. Daniel Leveto had entered into

25 some kind of scheme in order to, you know, commit Title 26

13

1 violations as far as the Internal Revenue Code.

2 THE COURT REPORTER: How do you spell Kalustian?

3 THE WITNESS: I believe it's K-a-l-u-s-t-i-a-n.

4 Q Did you initiate any undercover investigation?

5 A Yes, I did. Based upon the statements that were given

6 to -- provided to me by Mike Kalustian, I felt that we needed

7 to be able to corroborate that information that he provided.

8 Mr. Kalustian had some legal problems of his own at

9 the time, was -- basically had been indicted and I believe

10 entered a plea or was pleading guilty to some, if not all,

11 those charges and I felt that we needed independent

12 corroboration of the information that he provided.

13 Q And were any meetings taped?

14 A Yes, they were.

15 Q And was an undercover agent involved?

16 A Yes. Yes. Mr. Kalustian agreed to introduce an IRS

17 undercover agent to Daniel Leveto.

18 Q And based on the information that you gleaned from the

19 tax returns and also from the undercover operation, did you

20 determine that search warrants were necessary in this case?

21 A Yes, I did.

22 Q Why was that, agent?

23 A Well, I believe that, based upon the information I had

24 concerning Dan Leveto's tax situation, information provided

25 by the confidential witness at the time, Mike Kalustian, as

14

1 well as information determined through our undercover

2 operation, and looking at some of the other items that we

3 had, I felt that there was evidence which was indicative that

4 beginning in 1991, Daniel Leveto basically either committed

5 or attempted to commit Title 26 violations relative to he and

6 his wife's income tax liabilities.

7 I believe that, based upon the information gathered

8 at the time, that from 1991 extending to the early part of

9 1996 up until when the affidavit was completed, that the

10 evidence was indicative that there was probable cause to

11 believe that Daniel Leveto, Don Turner and other individuals

12 had entered into a conspiracy to commit these violations.

13 And also I believed that, based upon my experience

14 and evidence obtained to date in the case, that there was
15 probable cause to believe that evidence in furtherance of
16 these violations would be found in either the business or the
17 residence addresses of Daniel Leveto.

18 Q Now, an IRS agent has summonses authority to obtain
19 records, do they not?

20 A Yes.

21 Q And you had the summons authority at that time and you
22 could have issued summonses?

23 A Possibly. However, you know, we were still in the
24 covert stage of that operation and when you issue summonses
25 on occasions, there are certain -- summons issued to third

15

1 parties that have to provide notice to the subject with
2 the -- or the taxpayer involved. And I felt by doing that,
3 that would just really basically null and void the undercover
4 operation, what was trying to be achieved.

5 Q Did you also become aware pursuant to the undercover
6 operation that Daniel Leveto may have been using nominees?

7 A Yes. You know, I felt that the evidence obtained from

8 both Mr. Kalustian and the undercover operation where

9 indicative that Dan Leveto's arrangements with Center Company

10 were basically sham transactions. And there was also

11 information on there that there were other -- what they were

12 termed colatos, or for colatos that Leveto was affiliated

13 with.

14 And I believe even on one occasion in that

15 affidavit in one of the conversations, he indicated that he

16 had control over an account in the name of one of these

17 entities drawn on PaineWebber.

18 MR. VORACEK: Your Honor, if I may provide the

19 witness with some documentation?

20 THE COURT: Sure.

21 Q Agent Lapina, I have just handed you a stack of

22 documents that begin on top with a Government Exhibit

23 sticker. Do you have that in front of you?

24 A Yes.

25 Q Sir, I ask you to look at Government Exhibits A and B.

1 Do you recognize those documents?

2 A Yes.

3 Q And what are those documents, please?

4 A These would be the search warrants and the items to be

5 seized relative to both Dan Leveto's business and residence

6 addresses.

7 Q And the business addresses is reflected on which

8 exhibit?

9 A Exhibit A.

10 Q And is the residence then on Exhibit B?

11 A Yes.

12 Q Did you prepare these warrants, sir?

13 A No.

14 Q And to the best of your knowledge, who prepared them?

15 A The U.S. Attorney's Office drafted these warrants.

16 Q Were these the warrants that you had executed in May of

17 1996?

18 A Yes.

19 Q Agent Lapina, I now ask you to look at Government

20 Exhibit C. What is that document, sir?

21 A This would be the items to be seized list which would

22 have been attached to both of these warrants.

23 Q Did you prepare that document, Exhibit C?

24 A Yes, I did.

25 Q And I ask you now to look at Government Exhibit D. And

17

1 do you recognize that document, sir, and can you identify

2 that?

3 A Yeah. This appears to be the affidavit which I drafted

4 to establish probable cause for the issuance of the warrants.

5 Q And I believe you had said earlier that IRS procedure is

6 for you to get IRS approval of affidavits for search warrants

7 before you proceed further, is that correct, sir?

8 A Yes.

9 Q And did you do that for this affidavit, sir?

10 A Yes, I did.

11 Q And did you obtain the necessary approval from your

12 supervisors?

13 A Yes.

14 Q And, Agent Lapina, after you obtained approval of the

15 application as set forth in Exhibit D, did you then provide

16 that to the U.S. Attorney's Office for the preparation of the

17 warrants?

18 A The affidavit would have been forwarded to the

19 supervisor in Pittsburgh. Then from there, it would have
20 been -- if any change were made, it would have been forwarded
21 to district council. District council would then, upon their
22 approval, would have forwarded the affidavit and any cover
23 letter information to the U.S. Attorney's Office giving them
24 further direction and authorization.

25 Q And, Agent Lapina, I believe you said that you have had

18

1 prior training also in preparing affidavits for search
2 warrants?

3 A Yes. I have had training and I also had prepared a
4 previous affidavit.

5 Q What is your understanding of the rationale for an
6 application affidavit for a search warrant?

7 A Well, you have to basically in that application
8 affidavit establish that there has been -- there is probable
9 cause to believe that certain violations have been committed
10 and basically there is reason to believe that evidence of
11 these violations would be found in the locations you are
12 asking to be searched.

13 Q And have you alleged in your affidavit of Exhibit D that

14 criminal violations did occur?

15 A Yes. I believe I articulated that it was my belief that

16 there was probable cause to believe that evidence or

17 violations -- evidence of violations of both Title 26 and

18 Title 18 had occurred.

19 Q And specifically which violations of Title 26 are we

20 talking about?

21 A 7201, which would be attempted evasion of tax, 7206(1)

22 relative -- it would be 7206(1), which deals with the filing

23 of materially false income tax returns.

24 Q And were you able to determine a timeframe of criminal

25 violations?

19

1 A Well, the years that we were concentrating on at that

2 time were 1991 through 1995.

3 However, like I explained before, when you are

4 doing an indirect method of proof case, you need to be able

5 to document a good starting point which would go back a

6 number of years prior to the first year, which would be 1991.

7 Q Why did you limit the probable cause for the Title 26

8 counts to the 1991, I believe you said the 1994 and 1995 tax
9 years?

10 A Well, we were in 1996 and the 1996 returns wouldn't have
11 been due to be filed at that time.

12 Q Were you able to review the 1991 return?

13 A Yes.

14 Q 1992?

15 A Yes.

16 Q 1993?

17 A Yes.

18 Q And '94?

19 A Yes.

20 Q And '95?

21 A '95 I believe had been filed at that time and I had not
22 obtained a return itself.

23 Q And was there anything about your review of the tax
24 returns that indicated to you that there may be probable
25 cause for a criminal violation of Title 26?

1 A Well, looking at his tax returns for the years 1989

2 through -- and 1990, it indicated that he reported a
3 substantial amount of gross receipts, net profits, adjusted
4 gross, taxable income as well as tax liabilities.

5 However, beginning in 1991 whenever he became
6 involved with Don Turner and these other individuals, you can
7 see that there is a drop-off in the income which extends all
8 the way through 1994.

9 Q Sir, I ask you to look at Government Exhibit D, your
10 application affidavit.

11 Are your statements regarding your review of the
12 tax returns reflected in that affidavit?

13 A Yes, they are.

14 Q And what numbers of your affidavit are such statements
15 reflected in?

16 A As far as a review of his tax returns?

17 Q Yes.

18 A I believe it's number eight and number nine.

19 Q So, your inclusion of the information regarding tax
20 returns of Dr. Leveto in your affidavit pertain to probable
21 cause?

22 A Well, it's one facet that would, you know, tend to
23 establish probable cause.

24 Basically, what we are trying to show here is that,
25 you know, prior to 1991 he reported a lot of income, had a

21

1 lucrative business and then, all of a sudden, that the income
2 drops way off. Has to be a reason for that.

3 Q If you then look at Government Exhibit D, your
4 affidavit, what information generally is reflected in No. 11?

5 Is that information you gleaned from your private
6 investigator?

7 A Well, the evidence we had obtained to date or during the
8 investigation was indicative that Daniel Leveto was involved
9 in the sale and promotion of a book for Don Turner. And back
10 in 1993, a private investigator in southern California saw an
11 advertisement for this book in I think the Southern
12 California edition of the Wall Street Journal.

13 So, he decided to send away for a copy of the
14 information that Daniel Leveto would provide basically going
15 through what this book could do for you to reduce your income
16 tax liabilities.

17 Upon the investigator's review of this

18 investigation, he felt that it wasn't valid, he felt that it
19 was a scam, and he forwarded that information to the Internal
20 Revenue Service.
21 Q So, what was the reason that you included such
22 information in your affidavit?
23 A Well, it was -- basically, this information is what
24 started generating the civil examination which was assigned.
25 It was also indicative that going back as far as

22

1 1993, we knew that Daniel Leveto was involved in the sale and
2 promotion of this book for Don Turner.
3 Q Does it relate to the probable cause that a crime had
4 occurred?
5 A Again, yes, I believe it is one facet in establishing
6 probable cause.
7 Q Is that solely for crimes involving Title 26 or other
8 crimes?
9 A Well, no. It would reflect on both Title 26 and also
10 the Title 18 conspiracy charge or violation which we were
11 looking at at the time to show -- showing here back in 1993,
12 that Daniel Leveto and Don Turner were involved together.

13 Q Then if we look further at your application and

14 affidavit, Exhibit D, do you also lay out in No. 12

15 information from a confidential witness?

16 A Right. That confidential witness, again, I identified

17 earlier as Michael Kalustian, had numerous conversations and

18 meetings with Daniel Leveto from, you know, in 1994 all the

19 way, I believe, through 19 -- early part of 1996.

20 Q And what pertinence does that -- does No. 12 have in

21 your affidavit as it relates to probable cause determination?

22 A Well, the information that is indicated in there

23 contains a lot of statements which, to me, indicated that

24 although Daniel Leveto made a lot of self-serving statements

25 to the effect that what he was doing was illegal, that he was

23

1 aware that his arrangements with Center Company were

2 basically not valid, not legitimate, also indicative -- the

3 information is his dislike for the federal government and the

4 tax system, basically how he could still dictate whatever

5 income he wanted, whatever salary he wanted, how he had

6 control over these nominee accounts in the name of Center

7 Company and, you know, other entities.

8 Q If we look at Government Exhibit D, No. 13 I believe
9 contains information concerning a drawing of the residence.

10 Do you see that, agent?

11 A What page is that on?

12 Q That's No. 13 of your Exhibit D.

13 A Yes.

14 Q What pertinence does that information have in your
15 affidavit?

16 A Well, the information from the confidential witness two,
17 which would have been Mike Kalustian's wife, was basically a
18 layout, to the best of her recollection, of the Levetos'
19 residence as far as, you know, office space, bedrooms,
20 kitchen.

21 She had basically provided information that there
22 was an office area in the residence that had, I believe, a
23 safe and some records and everything and we were trying to
24 determine possibly where that was.

25 Q Did you add that section in your affidavit to establish

1 probable cause that evidence of possible Title 26 and Title

2 18 violations may be present at the residence?

3 A Yes. And also to corroborate some of the information

4 received regarding the existence of, I believe, a safe or

5 safes.

6 Q And if I ask you to look at No. 14 of your affidavit,

7 does that include information concerning the undercover

8 agent?

9 A Yes, it does.

10 Q And why was that information included in your affidavit?

11 A Well, the information developed during the undercover

12 operation basically I felt corroborated the information

13 provided by Mike Kalustian, as well as providing us with

14 information and insight into the conspiracy violation which

15 we were looking into between Dan Leveto, Don Turner and other

16 individuals.

17 During the course of that undercover operation, we

18 were able to determine that Don Turner had previously been

19 convicted of federal tax crimes, and he also had employed

20 during that time period the services of an individual by the

21 name of Jack Williams basically just to sign tax returns for

22 a fee and also appears as trustee in name only.

23 Information developed on that undercover operation

24 were indicative that Jack Williams was involved to a degree

25 with Dan Leveto's operations basically the same type of

25

1 format, you know, name only, had really no power or control,

2 had no input or anything as far as the operations went.

3 You know, also developed information showing

4 that -- I believe indicated that there was -- reasonably

5 violations were committed when, you know, Don Turner makes

6 statements to the fact that to get into this program first

7 you have to decide if it's legal, you have to decide if it

8 was within your comfort zone, if it is workable, things of

9 that nature.

10 Also statements made in there to the fact that --

11 which indicated that Leveto had dictated basically whatever

12 income he wanted, had control over Center Company and other

13 nominee accounts. Again, various information which was

14 provided through statements received by Mike Kalustian.

15 Q Did your investigation also involve doing mail covers?

16 A Yes. Yes, it did.

17 Q And was that information also detailed in your

18 affidavit?

19 A Yes, it was.

20 Q And for what purpose did you put that information in

21 your affidavit?

22 A It was basically to show that there was information

23 relative to financial accounts and other financial

24 transactions that were being sent to both the business

25 address and also the residence address. Evidence indicative

26

1 that financial accounts in nominee name were being sent to

2 those locations as well.

3 Q You stated nominee names. What names are you referring

4 to?

5 A Well, I believe that Center Company was a nominee name

6 being utilized here. Box Elder, Ltd., was another nominee

7 name. Edge Co., I also believed that to be a nominee. I

8 believe Daniel Leveto had control over those accounts and the

9 disposition of funds.

10 Q When were the mail covers done?

11 A They went on for quite a while. I think I have in here

12 December through -- December through July. December of '94

13 through July of 1995.

14 Q So, you determined that through at least July of 1995,

15 there was correspondence sent to both the residence and the

16 business with some information concerning nominee names?

17 A Correct. Financial accounts.

18 Q All right. Agent Lapina, I ask you now to look at

19 Government Exhibit C. Do you have that in front of you, sir?

20 A Yes, I do.

21 Q And, sir, I believe you testified earlier that you

22 prepared that document, it was entitled items to be seized.

23 Is that correct, sir?

24 A Correct.

25 Q And this document, was that attached to both

27

1 Government's Exhibits A and B as part of the warrant?

2 A Yes, it was.

3 Q Sir, I draw your attention to Government Exhibit C and I

4 ask you to look at the first item as noted on Government

5 Exhibit C. What are those types of documents, in general

6 terms, sir?

7 A You want me to read them all or do you just want me to
8 describe them?

9 Q Just in general terms, sir, are those financial type
10 documents?

11 A Yes. Yes. They are all either financial records or
12 records which would basically assist in the reconstruction of
13 income, the determination of unreported income and additional
14 taxable income, as well as records which could establish that
15 overt acts in furtherance of violations of Title 26 and Title
16 18 were committed.

17 Q And did you just express why you believed these items,
18 as reflected in No. 1 constitutes fraud fruits and evidence
19 of possible violations of Title 26 and Title 18?

20 A Yes.

21 Q Now, if I ask you to look at No. 2 of Exhibit C, and
22 generally what types of documents are you looking for there?

23 A Correspondence and other information which would
24 basically provide the names and other identification of
25 co-conspirators, financial institutions and other entities

1 who the subject had a financial relationship with.

2 Q Now in your affidavit, did you name certain individuals
3 that may be considered conspirators or co-conspirators?

4 A I believe I put the names of Don Turner and Jack
5 Williams in there. But, we also had information that there
6 were others involved, including a Paul Harris, I believe, Les
7 Rutherford.(Sp)

8 Q Did you also put in your affidavit names of possible
9 entities associated with Daniel Leveto?

10 A Yes, I did.

11 Q And the purpose then of putting No. 2 -- or what was the
12 purpose of asking for documents related to No. 2 of
13 Exhibit C?

14 Did you consider that to be fruits and
15 instrumentalities of crimes?

16 A Well, correspondence, you know, my experience is that in
17 these type of investigations, co-conspirators communicate
18 with one another in some form, you know, whether it be
19 correspondence or whatever, and that would be indicative of
20 any directions, communications that they had.

21 Also, basically this information could provide
22 leads to any of the co-conspirators' whereabouts, any

23 whereabouts of the financial institutions involved in this
24 case; things like that.

25 Q Sir, I noticed that on Exhibit C in the items that you

29

1 seized, number one and two, you don't have any timeframe as
2 far as what years such documents could be seized.

3 Can you explain why you didn't put a timeframe in?

4 A I didn't put a timeframe here specifically in
5 conspiracy. I felt that the evidence shoved that the
6 conspiracy began in 1991 and continued through 1996,
7 beginning of 1996, and also I articulated that you needed to
8 also get prior years' information to be able to establish the
9 Title 26 violations.

10 So, even though it is not reflected on here, I
11 would have provided that direction to the agents who were
12 involved in the search warrant at the meeting which occurred
13 prior to the warrant, basically indicating we were looking
14 for records that would help us show and prove that --
15 Title 26 violations from the late 1980's up until the present
16 time, which was approximately May, 1996.

17 Q And would that be to establish evidence of a Title 26

18 crime, a Title 18 crime, or all the types of crimes mentioned

19 in your affidavit?

20 A Both. Both Title 26 and Title 18 violations. The

21 object of the Title 18 conspiracy was to commit Title 26

22 violations. So, I felt they went hand in hand.

23 Q Agent Lapina, if you again look at Exhibit C and, in

24 particular, No. 1, I note that you do record a lot of

25 different types of financial documentation.

30

1 Were you able, at that time, to describe items more

2 particularly in light of the information available to you?

3 A Well, I don't know if I was or I wasn't. I mean, these

4 are the types of information that you need to be able to show

5 that Title 26 violations occurred or Title 18 violations

6 occurred.

7 We may have had some information, but we didn't

8 have it all. And, you know, we were looking for basically

9 this evidence which would help us in my belief reconstruct

10 the income, determine the unreported income and tax, as well

11 as identify overt acts to the conspiracy and conspirators

12 involved.

13 Q Well, I just noticed, for example, under No. 1 you

14 indicate bank statements.

15 Would it have been prudent for you to put in here

16 that bank statements should only apply to a particular entity

17 or from a particular bank?

18 A No. Because I felt that, based on my training, that you

19 have bank statements and other financial records in your

20 possession that's evidence of either ownership and/or control

21 of those financial accounts.

22 Q And are they basically needed for your investigation to

23 determine all financial records?

24 A Yes. All financial records that were tied back to

25 Daniel Leveto.

1 Q And for what purpose?

2 A Again, if you are doing an indirect method of proof, you

3 have to be able to establish those bank account balances with

4 a reasonable certainty, you have to be able to determine the

5 value of the assets with a reasonable certainty. Liabilities

6 have to be determined.

7 I mean, you can't put together a half-baked
8 computation because you don't have all the evidence.

9 MR. VORACEK: Your Honor, the United States moves
10 for the admission of Government's Exhibits A, B, C and D.

11 THE COURT: A, B, C and D are admitted.

12 BY MR. VORACEK:

13 Q Agent Lapina, you indicated that after the warrants were
14 prepared and approved that you presented them to the
15 magistrate. Was that your testimony, sir?

16 A Yes.

17 Q Do you recall when you presented them to the magistrate?

18 A I believe it was on May 1st, 1996.

19 Q And what did you present to her? Was it Government
20 Exhibits A, B, C and D?

21 A Yes. I would have taken the approved affidavit,
22 application and the affidavit, as well as the two warrants
23 and the items to be seized, to her.

24 Q Did you discuss the information included in Government
25 Exhibit D with the magistrate?

1 A Government Exhibit D?

2 Q Yes. The affidavit, sir.

3 A Yes. She reviewed the information. She read over the
4 affidavit and she didn't really have a lot of questions, as I
5 recall. I know she commented that she felt it was thorough,
6 and basically she approved it.

7 Q Did you sign the affidavit in her presence?

8 A Yeah. I would have sworn to the information in the
9 affidavit, I believe, in her presence.

10 Q And was the affidavit then -- did the affidavit then
11 become part of the search warrant package at that point?

12 A The affidavit we also -- I believe I took to her a
13 motion to seal the contents of that affidavit due to the fact
14 that we had confidential witnesses in the case. And she
15 signed the motion to seal and basically then, you know, the
16 affidavit would not have been included or attached to the
17 warrants.

18 Q And, in fact, the affidavit was sealed then?

19 A Correct.

20 Q All right. Agent Lapina, after the warrant has been
21 approved, did you then, in fact, execute a search warrant at

22 the locations described in Government's Exhibits A and B?

23 A Yes.

24 Q And did that happen -- when did that happen?

25 A Well, both of those warrants were executed -- I believe

33

1 it was May 2nd, the following day.

2 Q The day after the magistrate signed the warrants?

3 A Correct.

4 Q And what steps did you take, sir, as the lead agent of

5 the case, in relation to the execution of the warrant?

6 A Well, internal policy dictates that even if you have an

7 approved affidavit and permission to execute a warrant, you

8 have to -- internally you have to prepare a search warrant

9 plan and a risk assessment basically showing that you have a

10 logical plan to facilitate the execution of these warrants

11 and basically they are not high risk which would involve any

12 potential dangers to members of the search team as well as

13 the occupants of the addresses where you are going to.

14 Q Did you have an opportunity to discuss the warrants with

15 the agents who would be involved in the execution of the

16 warrants?

17 A Yes, I did. On the afternoon of May 1st, we had a
18 meeting of all the participants, and at that time I would
19 have provided them with a synopsis, a summary of the case,
20 basically the subjects who we were aware of that were
21 involved in these activities, the timeframes that we were
22 looking at to help prove the violations.

23 Q Were they also provided with copies of the warrants
24 Exhibit A and Exhibit B?

25 A Yes, they would have been provided with A and B, as well

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1 as the items-to-be-seized list, which was Exhibit C.

2 Q Did you also provide the agents with a copy of your
3 application affidavit, Government Exhibit D?

4 A Well, due to the fact that the affidavit was sealed, I
5 had a draft of the affidavit which I would have more than
6 likely circulated while I was going over the synopsis and
7 summary of the investigation.

8 I do believe that I gave a draft. I would have
9 collected those after the meeting so there was no chance that
10 that information would be let out. And I do believe that the

11 two -- the team leader who did the residence and the
12 assistant team leader who was helping me at the business,
13 were provided with copies of the drafts of that affidavit.
14 So, you know, they had it with them during the course and
15 execution of the search warrant.

16 Q To the best of your knowledge, were any agents or anyone
17 else involved in the execution of the warrants that weren't
18 present at your meeting on May 1st?

19 A The only individual that was not present would have been
20 the local Vernon Township police officer.

21 Q And did that individual participate in the -- actually
22 searching either the business or the residence?

23 A No, he didn't.

24 Q Agent Lapina, I now ask you to look at what's been
25 marked as Government Exhibit E. Do you see that, sir?

35

1 A Yes, I do.

2 Q What is that document, sir?

3 A I believe this is a statement which I would have signed
4 and had notarized back in August of this year.

5 Q Is that an accurate reflection of your statement, sir?

6 Is everything on that document, Exhibit E, accurate
7 to the best of your knowledge?

8 A Yeah, to my knowledge, it is. Otherwise, I wouldn't
9 have signed it.

10 Q Sir, I ask you now to, regarding the actual execution of
11 the search warrants, I believe you indicated they started on
12 May 2nd?

13 A Correct.

14 Q What time were the agents set to begin the search
15 warrants? What time of day?

16 A It was early in the morning. We had a meeting at the
17 Vernon Township Police Department for both the teams that
18 were set to go to the business as well as the residence
19 addresses.

20 Q There were two separate teams of agents?

21 A Correct.

22 Q One for the business and one for the residence?

23 A That's right.

24 Q And on that morning of May 2nd, did you all go to the
25 business together?

1 A No. The designated individuals for that team went to
2 the business to the staging area where we had or the way
3 area, whatever you want to call it, which was a car wash
4 close to the individual business.

5 And then the team that was set to do the search of
6 the house basically went to an area in close proximity to the
7 residence and awaited the -- for the direction from the team
8 at the business.

9 Q Where did you go, sir, that morning?

10 A I went to the business.

11 Q And did you immediately begin to search -- did you
12 immediately gain entrance to the business when you got there,
13 or what were your actions?

14 A Well, I believe we arrived there around six o'clock or
15 so. And at around six-twenty is when Daniel Leveto arrived
16 at the veterinary business. And with that, we would have
17 gone down, got out of the car, identified ourselves and
18 stated our purpose for being there, presented him with a copy
19 of the warrant and the items to be seized. At that time, he
20 basically let the search team into the business premises.

21 The search team went about their duties in securing

22 the premises, doing the videotaping, doing the schematic
23 drawings and beginning preparations to search.

24 At that time, we made entry, myself and Special
25 Agent Adams, I believe, went into another area of the

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1 business and had some discussions with Dan Leveto about not
2 only the search warrant at the business but the search
3 warrant to be executed at his residence.

4 Q Sir, I believe you mentioned that the agents went around
5 and put -- did they put letters on certain rooms at the
6 business?

7 A Yes. It's standard practice, basically each room in a
8 structure would get a letter and so you can determine
9 basically for seizing purposes where information was found
10 based upon the letter referenced.

11 Q I ask you to look at what's been marked as Government
12 Exhibits M-1, M-2 and M-3.

13 Sir, are those documents the drawing of the
14 business, the index of letters, the lettered rooms and the
15 letters that were actually used at the business on May 2nd,

16 1996?

17 A Which ones are you specifically referring to?

18 Q M-1, M-2 and M-3.

19 A I only see M-3. Here we go. M-1 and M-3.

20 THE COURT: You have an M-2?

21 THE WITNESS: I got an M-3.

22 THE COURT: Do you want to borrow my M-2?

23 Q Sir, are those the documents that you just described as

24 far as the drawing of the business and the letters used by

25 the agents in reference to rooms at the business?

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1 A Yeah. These letters look to be in the handwriting of

2 the individuals who were -- the initials of the individuals

3 who were at the business location. Referring to M-3.

4 M-2, I am looking at are basically the initials of

5 Teresa Slupe who was there at the business as well. She

6 would have basically made this the reference -- what letters

7 referenced what rooms in that business.

8 Q So, it is my understanding from your testimony, sir,

9 that after the rooms were lettered and drawings made, that a

10 tape is then made, a videotape?

11 A Yeah, once the letters are put up. And basically the
12 videotape is made to show what the building looked like
13 before the warrant, the search actually started, and also one
14 is made at the end after the search warrant is completed.

15 Q And do you know that such tape was made in this case?

16 A Yeah, I believe that they were.

17 MR. VORACEK: Your Honor, if I may approach the
18 witness?

19 THE COURT: Sure.

20 Q Agent Lapina, I hand you what's been marked as
21 Government Exhibits -- Government Exhibit J. And does
22 Government Exhibit J -- have you had an opportunity to
23 previously review that tape?

24 A Yeah. I believe I reviewed Exhibit J, as well as the
25 other two.

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1 Q And is Government Exhibit J -- does that -- was that a
2 videotape of the business prior to the search and also after
3 the search conducted on May 2nd, 1996?

4 A Yeah, I believe it was.

5 MR. VORACEK: Your Honor, I move for the admission

6 of Government's Exhibits M-1, M-2, M-3 and Government

7 Exhibit J.

8 THE COURT: M-1, 2 and 3 and J are admitted.

9 Q Okay, sir, after the tape is made, does the -- did the

10 search begin of the business?

11 A Well, at that time, I know the searching activities were

12 going on there, but Judy Graham was the assistant team leader

13 there who basically took over that facet.

14 A lot of the time when I was there, I was in

15 discussions, with interview with Dr. Leveto, as well as

16 Special Agent Adams was with me, as well, in the business.

17 Q So, you did not participate in the search, itself?

18 A No.

19 Q There was a team leader that was present at the search

20 of the business?

21 A I designated another agent to be the team leader to

22 carry on if I became involved in a lengthy interview with

23 Dan Leveto.

24 Q And are you aware of the procedures that were utilized

25 in the search of the business?

1 A Again, the agents, prior to searching, would have
2 secured the premises. Once the premises was secured, they
3 would have put the letters up in each room and basically had
4 a listing corresponding each room to the letter. A videotape
5 prior to starting did a schematic drawing of the rooms in
6 that business.

7 Q Now, sir, if an agent finds documents that the agent
8 feels is related to the items to be seized, does the agent
9 take the exhibits at that time or documents, or what does the
10 agent do with them?

11 A Well, the agent would have an envelope, typically a
12 manilla envelope, and they would put those documents into the
13 envelope and label as to what room they came from and give
14 you a description of what those documents were.

15 And say, for instance, it was room A and they can
16 only fit so many in one envelope and they knew they had to
17 use multiple, they would label that A-1 and go on and to the
18 next one, A-2, until they were complete.

19 Q Now, the actual searching agents, they do have a copy of
20 the items to be seized that they can refer to?

21 A Yes.

22 Q At the time of the execution of the warrant?

23 A Sure.

24 Q And after they seize such documents, do they then

25 provide such documents to another agent for cataloging?

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1 A How we had that process set up was, we had the
2 individuals who had our computerized search warrant inventory
3 program, and when the agents were done with the room, they
4 would take whatever it is that they had in the envelopes to
5 be seized up to that individual for input into the search
6 warrant inventory program.

7 Q And was that done at the business?

8 A Yes, it was.

9 Q And was an inventory of the actual seized documents made
10 at the business?

11 A Yes.

12 Q And if I ask you to refer to Government Exhibit F, is
13 that sufficient?

14 THE COURT: F? What letter?

15 MR. VORACEK: F.

16 THE COURT: F?

17 MR. VORACEK: F.

18 Q Does Government Exhibit F accurately reflect the
19 inventory of the seized items taken from 316 Conneaut Lake
20 Road on May 2nd, 1996?

21 A Yes. This is the inventory that would have been -- This
22 would have been a copy of the computer-generated inventory
23 from the program based upon the input of the individual who
24 was doing that.

25 Q Would Dr. Leveto have been provided with a copy of

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1 Exhibit F at the conclusion of the search at the business?

2 A Yes, he would have been.

3 Q And when you started the search, was Dr. Leveto provided
4 with a copy of the search warrant, Government Exhibit A?

5 A Yes, he was provided with a copy of the search warrant
6 for any items to be seized from the business as well as his
7 residence.

8 Q So, he was provided with a copy of the Government's
9 Exhibits A, B and C?

10 A Yes.

11 Q And that was prior to the initiation of the searches?

12 A Yes.

13 Q Now, I think you said, sir, that you weren't actively

14 involved in searching the business that day?

15 A No, I was not.

16 Q Did you indicate that you met with Dr. Leveto the very

17 first thing in the morning?

18 A Yeah. What my concern was, that I had done surveillance

19 on both his business and his residence for a number of days

20 and to establish -- I knew he had children at his residence

21 who basically left to go to school at a certain time in the

22 morning.

23 And knowing that, knowing that we had to execute a

24 search warrant there, I then discussed with Mr. Leveto what

25 possible options we had. You know, we could hold off on

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1 serving that warrant at the residence until the children had

2 left to go to school.

3 However, that basically to do that, I couldn't

4 leave him making phone calls. I couldn't have him leave the

5 business. I couldn't have other employees come in and leave
6 the business for fear that communications with whoever was at
7 the residence would occur and possible destruction of
8 evidence.

9 Q And were you in communication with the search team for
10 the residence?

11 A Yes, I was.

12 Q And were you able to determine -- did you find out when
13 the children vacated the residence?

14 A Yes. The team leader, Susie Hines, in discussions with
15 her had indicated, I believe, it was around eight o'clock
16 that morning that the children had left to go to school.

17 Q And at that point, what did you do?

18 A At that point -- well, basically, in my discussions with
19 Dan Leveto, he agreed to the conditions for us holding off on
20 executing the warrant until his children had left to go to
21 school.

22 Knowing that they were gone, asked him if he wanted
23 to be there, he wanted to be present. He said yes, he wanted
24 to be present. That necessitated us transporting him to the
25 residence.

1 Before we did that, I had some concerns that
2 transporting this individual in preparation to execute a
3 search warrant of his residence, that I don't want any
4 problems in the vehicle on the way there. So, Special Agent
5 Adams did a pat-down to make sure he didn't have any kind of
6 instruments or knives or anything on him that possibly would
7 present a problem to us.

8 After that, we got in the vehicle, all -- it was
9 myself, Special Agent Adams, Dan Leveto as well as Special
10 Agent Ed Wirth and we proceeded to his residence.

11 We met up with the search team, where they were in
12 their area. There was a Meadville police officer there which
13 we were going to use as a marked unit out in front of the
14 residence. Dan Leveto had indicated he did not want that
15 police car in front of his house so we cut the police officer
16 loose, gathered up everybody and proceeded to his residence
17 where he effected entry and that's where we encountered his
18 wife.

19 Q Did Dr. Leveto have some discussions with his wife at
20 that point regarding what was to take place?

21 A Yeah. There were some brief discussions about what --
22 she was informed who we were and why we were there and what
23 our purpose was and what we were going to do, et cetera.
24 We weren't there very long when he indicated he
25 wanted to return to the business. So, we did. We left and

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1 went back to the business and the search team at the
2 residence continued to do their job.
3 Q So, the transportation of Dr. Leveto to the residence
4 was at his request?
5 A Yes. He wanted to be present.
6 Q Was Dr. Leveto handcuffed while in the car to be taken
7 to the residence?
8 A No, he wasn't.
9 Q And after you encountered Mrs. Leveto at the residence,
10 you then transported Dr. Leveto back to the business?
11 A Yes. We went back to the business and resumed the
12 interview which we had started prior to leaving.
13 Q Do you know whether a search had taken place at the
14 residence?

15 A Yeah. The search was continued to proceed at the

16 residence after we had left.

17 Q Now, you weren't present at the search of the residence?

18 A No; only upon the entry.

19 Q But, how do you know that search actually did occur at

20 the residence?

21 A Well, because my communications with Special Agent

22 Hines, who was the team leader, she provided me with an

23 inventory after the search of the items to be seized, as well

24 as, I believe, a consent form, that there was a shed, I

25 believe, out back, something, that there was -- a consent to

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1 search was signed off on to search that as well.

2 Q Agent Lapina, I ask you to look at Government Exhibit G.

3 A Okay.

4 Q What is that, sir?

5 A This is an inventory of item seized at 388 Edgewood

6 Drive, which would be Dan Leveto's residence, on May 2nd,

7 '96.

8 Q And was Government Exhibit G, that inventory, prepared,

9 to the best of your knowledge, in the same way as Government

10 Exhibit F was prepared as far as the inventory of the

11 business?

12 A Could you repeat the question?

13 Q Yes, sir.

14 Government Exhibit G, a list of the items that were

15 seized from the home, was that also prepared under the same

16 process as you previously described with regard to the

17 business?

18 A Yes. To my knowledge, it was.

19 Q And was a copy of Government Exhibit G, the inventory of

20 items seized, was that left with Mrs. Leveto or provided to

21 Dr. Leveto, to the best of your knowledge?

22 A Yes, it was, to the best of my knowledge.

23 Q And, sir, if I ask you to look at Government Exhibits

24 N-1, N-2 and N-3.

25 A I have an N-3 here.

1 Q All right.

2 A I don't believe I have N-1 and 2.

3 Q They should be just prior to N-3, agent.

4 A Okay. Here we go.

5 Q And, sir, are Government Exhibits N-1, N-2 and N-3, does
6 that constitute a drawing -- a schematic drawing of the rooms
7 at the residence and also an index of the lettered rooms at
8 the residence and lettered placards that were used at the
9 residence on the day of the search warrant, May 2nd, 1996?

10 A Yes, they do.

11 Q And, sir, to the best of your knowledge, were videotapes
12 also made of the residence prior to the search and after the
13 search?

14 A Yes, to the best of my knowledge.

15 Q Have you had an opportunity to review those videotapes?

16 A Yes.

17 Q And I ask you, sir, to look at Government Exhibits K
18 and L. Do you have them?

19 A Yes.

20 Q And are those videotapes, sir, of the residence at
21 388 Edgewood Drive both prior to and after the search on
22 May 2nd, 1996?

23 A Yes, I believe so.

24 MR. VORACEK: Your Honor, the government moves for
25 the admission of Government's Exhibits G, K, L, N-1, N-2 and

1 N-3.

2 THE COURT: Okay. G. We had already admitted J, K
3 and L.

4 MR. VORACEK: Yes.

5 THE COURT: And N-1, 2 and 3 are all admitted.

6 MR. VORACEK: Yes.

7 Q Agent Lapina, you did mention that you had received a
8 voluntary consent to search a building on the residence.

9 Was that part of your prior testimony, sir?

10 A Yeah; not only the residence, but I also believe at the
11 business we had received voluntary consent to search the
12 upstairs apartment area at the residence. I believe there
13 was an outbuilding.

14 Q Agent, I ask you to look at Government's Exhibits
15 O and P.

16 A Okay.

17 Q And what are Government's Exhibits O and P, sir?

18 A This is IRS Form 6884, which were voluntary consent to
19 search a person, premises -- premises or conveyances. And in

20 this case, they are both -- one is relative -- O is relative

21 to second floor apartment used for storage by Daniel Leveto

22 at 316 Conneaut Lake Road, Meadville.

23 The other was for an outbuilding, which would be

24 388 Edgewood Drive, Meadville. Both signed by the agents, as

25 well as one -- O is signed by Dan Leveto. P is signed by

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1 Margaret Leveto.

2 Q Searching locations that are described in Government

3 Exhibits O and P, did you determine that they did not fall

4 within your search warrant of A and B?

5 A It was questionable as to whether they did or not. And

6 basically without having to get another warrant, if they were

7 agreeable and consented to our search of those areas, you

8 know, we felt to basically protect ourselves.

9 Q And was consent provided to you by Daniel Leveto?

10 A For the business, second floor area.

11 Q Did he sign the document, Government Exhibit O?

12 A Yes.

13 Q And was consent also provided to search an outbuilding

14 at the residence?

15 A Yes.

16 Q And was that Margaret Leveto that provided such consent?

17 A Yeah. Her name is reflected on here.

18 Q And she signed that document, sir?

19 A Well, I didn't witness her signing because I wasn't

20 there. I would imagine Susie Hines or George Torbic would

21 have witnessed her signing.

22 MR. VORACEK: Your Honor, the government moves for

23 admission of Government Exhibits O and P.

24 THE COURT: O and P are admitted.

25 Q Sir, how did you spend then the rest of the day on

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1 May 2nd, 1996, after you transported Daniel Leveto back to

2 the business?

3 A Special Agent Adams and I continued to interview him

4 until roughly midday. Then we took a break and we had some

5 lunch, which we offered to Dan Leveto, which he declined.

6 Took a brief break for that and then we went back and

7 continued to interview him for another hour or so basically

8 until we filled that -- oh, I think at that time that, about

9 two-thirty or so that afternoon, that Dan Leveto had

10 indicated he didn't want to answer any more questions.

11 Q Sir, prior to interviewing Dr. Leveto on May 2nd, 1996,

12 did you advise him that he really didn't need to sit down and

13 talk with you?

14 A Yeah. We advised him that he was free to go at any

15 time.

16 Q Was he really free to leave the business?

17 A Sure.

18 Q But, he chose to stay?

19 A He chose to stay. I mean, I told him that if he left,

20 he could come back. But, if he -- you know, he was free to

21 stay as long as he wanted to and he was under no obligation

22 to answer any questions of ours either.

23 Q Prior to interviewing him on May 2nd, did you read him

24 any rights, any noncustodial type rights?

25 A Yes. It's policy -- IRS policy in an administrative

1 investigation that prior to interviewing the subject of the

2 investigation, you have to administer your noncustodial

3 rights to the individual. And that's what I would have done

4 early on before we started to interview him.

5 Q Is part of those rights that you administered to

6 Dr. Leveto that day the right that if Dr. Leveto wants, he

7 could have an attorney present?

8 A I believe that to be in there, yes, sir.

9 Q Is it also part of those rights that at any time during

10 the questioning of the agents, that if Dr. Leveto wanted to

11 call a halt to the questioning, he could do so?

12 A Yes.

13 Q And, in fact, isn't that what he did at some point

14 during the day?

15 A Yes. Approximately -- I believe it was like, you know,

16 two, two-thirty, that he indicated he didn't want to answer

17 any more questions, he wanted to talk to counsel.

18 Q Agent Lapina, now you searched the business on a regular

19 business day of the veterinary practice, is that correct,

20 sir?

21 A Yes.

22 Q Did other employees, other than Dr. Leveto, show up at

23 the business that day?

24 A Yes, I believe they had showed up. Again, I was in with

25 Dan Leveto for a considerable amount of time, but we knew

52

1 they would be reporting for work.

2 Special Agent Graham was prepped on what she needed
3 to do as far as dealing with those employees.

4 Q Did the business actually operate that day?

5 A Not until later in the afternoon after the search was
6 substantially complete.

7 Q What about patients, did the patients start showing up,
8 or how was that arranged?

9 A I believe that Special Agent Graham, with the assistance
10 of some of the employees, started to cancel some of the
11 appointments. Anybody who showed up with animals, I believe
12 that Dan Leveto provided the name of another veterinarian
13 clinic where they could go if they needed medical attention.

14 The purpose of all that being that we have
15 individuals conducting a search and for purposes of that, I
16 didn't think it was conducive to have a business operating
17 where you had animals and potentially surgeries and medicines
18 being administered.

19 And also, you know, there is really not a need for

20 those individuals to know what was going on either.

21 Q Did you indicate that the business was able to operate

22 later that same day?

23 A Yeah.

24 Q When did your search conclude?

25 A Well, it was substantially completed about two-thirty, I

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1 believe.

2 However, there was a computer in the back area of

3 that business that was being imaged by one of our computer

4 people and we didn't really know it was going to take a

5 while. But, that was out of sight. Nobody was going to see

6 that individual back there. It was agreed that the

7 individual could remain there and complete the work and then

8 the business could reopen while he was doing that.

9 Q Now, while the search was undergoing at the business and

10 at the residence, do you know if there were occasions where

11 agents may have taken boxes of documents or that included

12 some documents that weren't actually reflected in the items

13 to be seized? Do you know that to be the case?

14 A Yeah, I believe that it's possible because later, I
15 think there was some items potentially like greeting cards,
16 or something, that may have been mixed in with other evidence
17 to be seized.

18 Q Now, if an agent is searching a location and they find
19 documentation that they see is something that they should
20 seize and it's included in a box, will they necessarily take
21 the whole box or will they go through every document in that
22 box?

23 A Well, I believe that if they find evidence within that
24 box which is indicative of the items to be seized that they
25 take the whole box. And at this point in time, to limit the

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1 intrusion of having the business closed for a prolonged
2 period of time and potential that the children were going to
3 come home from school at the residence, I believe that they
4 did seize evidence in containers or boxes that were at least
5 indicative to them it was on an items to be seized, they may
6 have taken the whole box.

7 Q Sir, when the warrants were -- when the searches were
8 completed on May 2nd at both the residence and the business,

9 did you then return the search warrants to the magistrate?

10 A I believe I probably would have returned them the

11 following day.

12 Q Did you also include the inventories that were expressed

13 in Government Exhibits F and G with the search warrants to

14 the magistrate?

15 A Yes.

16 Q And I think your testimony was that inventories were

17 left with Dr. Leveto for both the items taken at the business

18 and taken at the home?

19 A Well, for -- the items taken at the business would have

20 been left there at the business with Dan Leveto and at the

21 residence would have been left there at the residence with,

22 to my knowledge, Margaret Leveto.

23 Q Now, the items that were seized at both the residence

24 and the business, where did they go after the searches were

25 completed on May 2nd?

1 A They were transported back up to Erie to our offices.

2 Q Did you have physical possession of those documents at

3 that time?

4 A Yes.

5 Q And did you undertake a review of those documents?

6 A Yes; over many months.

7 Q About how many boxes in total were seized on that day?

8 A Numerous. That's all I can say. I couldn't give you an

9 accurate estimate.

10 Q What if I say a dozen boxes?

11 A Oh, I believe it to be more than a dozen.

12 Q All right, sir, I ask you to look at what's been marked

13 as Government Exhibit M-4 and M-5. M, as in Mary, five.

14 A Okay.

15 Q Do you have those in front of you, sir?

16 A Yes.

17 Q Sir, is the information that's included on those

18 documents reflective of your review of the seized documents

19 from the business and the residence?

20 A Well, I believe M-4 to be from the day of the search.

21 It's labeled 5-2-96. It would have been indicative of

22 Teresa's final tabulation of the inventory of the items to be

23 seized.

24 Q And what about M-5?

25 A M-5 would have been documents or notes that I would have

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1 prepared during the course of preparation to -- during review
2 of the evidence, as well as in preparation of returning some
3 of this information.

4 Q Your review of some of the documents that were seized at
5 the business, did you determine that they should or could be
6 returned to Dr. Leveto?

7 A Well, go starting with, I believe, the following Monday
8 after the search, Daniel Leveto had requested that the items
9 be returned, or certain items that he wanted returned to him,
10 and I would review those items based upon his request, and if
11 I felt that we could just make photocopies and return the
12 items to him, we did that.

13 My review of the evidence entirely, I do not
14 believe was completed until later in the year 1996 just due
15 to the volume of the evidence and other assignments that I
16 had.

17 Q Was it fair to say, though, that Government Exhibit M-5
18 constitutes a review of your -- of the documents that were

19 seized at the business and some of the documents that were

20 copied and returned to Dr. Leveto on specific dates?

21 A Yes.

22 Q And if you look at Government Exhibit N-4, does that

23 constitute again your review of the documents that were

24 seized at the home, at the residence on May 2nd, 1996, and

25 your making copies and/or returning some of those documents

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1 to Dr. Leveto?

2 A Correct.

3 MR. VORACEK: Your Honor, the government moves for

4 the admission of Government's Exhibits M-4, M-5 and N-4.

5 THE COURT: Government's Exhibits M-4, M-5 and N-4

6 are admitted.

7 Q Agent Lapina, I now ask you to look at Government

8 Exhibit H. Do you have that in front of you, sir?

9 A Yes, I do.

10 Q What is that document, sir?

11 A Well, this is a listing basically of seized items which

12 would be used in evidence in the government's case.

13 Q Have you had an opportunity to review that list, sir?

14 A Yes.

15 Q Have you had a recent opportunity to review the actual

16 documents reflected on Government Exhibit H?

17 A Yes. Last week.

18 Q And were you able to determine whether or not the

19 documents reflected on Government Exhibit H were, in fact,

20 seized at either the business or the residence on May 2nd,

21 1996?

22 A Yes, I believe them to be.

23 Q You believe every document on Government Exhibit H to

24 have been seized at either location?

25 A Well, like, I had reviewed some of the bank records that

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1 were there. I believe that the bank statements themselves

2 for some of the local bank accounts were the seized

3 documents, yes.

4 Q Sir, was there a way that you could determine if a

5 document was seized at either the business or the residence

6 and where in the business or residence it may have been

7 seized?

8 A During my review of the evidence, I would have gone
9 through the documents basically looking where they were
10 pulled out of -- what envelope they were in, which was
11 indicative of where they were located or found, and I either
12 would have handwritten likely in pencil on that document at
13 the top as to where it was found, or I had a stamp which I
14 would have stamped that document as to what particular --
15 like, if it was room B, if it was B-1, 2, 3, or B so forth
16 and so on, to designate whether it was at the business or the
17 residence. I would have put an R next to the letter, which
18 was indicative of the residence rather than the business.

19 Q Sir, I ask you to look at Government Exhibit H and I
20 note that the Exhibits 11 through 21 appear to be related to
21 financial institutions, bank records.

22 A Correct.

23 Q Sir, were such records included as part of the items to
24 be seized as stated in your -- as attached to your warrants?

25 A Yes, I believe them to fall into this category one.

1 Q Sir, I note also that if we refer to Government Exhibit
2 H, it appears that Exhibits 22 relate to credit card

3 information.

4 Was credit card information also part of the items

5 to be seized as attached to either of your warrants?

6 A Yes.

7 Q And I note that Government's Exhibits 23 has to do with

8 investment account information.

9 Was that also part of the items to be seized

10 attached to your warrants?

11 A Yes.

12 Q And where would that have been found on the attachment

13 to the warrant?

14 A Well, there is one in there including the purchase, sale

15 and trading of commodities, stocks, bonds, mutual funds, or

16 other investments.

17 Q And you are reading that from Exhibit C?

18 A Yes. Under No. 1.

19 Q Sir, I now ask you to look at Government Exhibit H.

20 Numbers 30 through 36 appear to relate to business ledger

21 information from the veterinary practice, is that correct,

22 sir?

23 A Yes.

24 Q And the business ledger information, does that concern

25 the financial affairs of the veterinary practice?

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1 A Yes; to my knowledge, yes.

2 Q And did you review those documents, sir?

3 A I did.

4 Q Sir, was the documents that are reflected in numbers 30

5 through 36 on Government Exhibit H part of the items to be

6 seized under Exhibit C?

7 A Yeah. No. 1, I mean, books, records and ledgers, which

8 I believe what these items were.

9 Q Sir, again looking at Government Exhibit H, if we

10 generally look at what's been numbered from 70 through 154,

11 sir, are those documents reflective of certain

12 correspondence, faxes, with names on it such as Donald

13 Turner, Center Company, and FAR?

14 A Up to what exhibit?

15 Q 154. 70 through 154.

16 A Yes.

17 Q And, sir, were those documents also part of the items to

18 be seized at the -- during the searches?

19 A I believe that these would have fallen into either No. 1

20 or No. 2 on that items-to-be-seized list.

21 Q Sir, Government Exhibits 160 through 225, as noted on

22 Government Exhibit H, appear to relate to bank records of a

23 certain type. Is that correct?

24 A Foreign bank records.

25 Q Foreign bank records, sir?

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1 A Yes.

2 Q Do foreign bank records fall within the items to be

3 seized as reflected on Government Exhibit C?

4 A Sure. I believe they do. I believe they fall into item

5 one, at a minimum.

6 Q All right. Sir, look at -- if I can draw your attention

7 to Exhibit No. 229 on Government Exhibit H.

8 A Yes.

9 Q And what is Government Exhibit 229?

10 A It was a stamp of a signature for an individual named

11 Leonard Adler.

12 Q And was that seized, sir?

13 A Yes.

14 Q And did that also fall within the items-to-be-seized

15 list attached in Government Exhibit C?

16 A Yeah, I believe that to -- based on other evidence

17 related to that that was found would be evidence which was

18 indicative of, and other items evidencing the obtaining,

19 secreting, transfer and/or concealment of assets and the

20 obtaining, secreting, transfer, concealment and/or

21 expenditure of money.

22 Also, it could have been possibly number two. It

23 could have fallen into the co-conspirator category.

24 Q Can you describe the stamp? What type of stamp was it?

25 A stamp of what?

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1 A A stamp of a signature.

2 Q And was that signature Daniel Leveto's signature?

3 A No.

4 Q Whose signature was on the stamp?

5 A Appeared to me that it was the signature for someone

6 named Leonard Adler.

7 Q And where was that stamp found?

8 A I believe it was found in the office area, maybe more
9 particularly in the office safe area.

10 I would have to look specifically at the items to
11 be seized.

12 Q Agent Lapina, I now ask you to look at -- on Government
13 Exhibit H, numbers 230 to 329.

14 Do those appear to be handwritten notes?

15 A 230 to what number?

16 Q 329.

17 A Yes, they do.

18 Q And was it your determination that those handwritten
19 notes fell within the list of items to be seized on a -- that
20 are reflected in Government Exhibit C?

21 A Yes, I believe they fall into -- into the area of other
22 items which would evidence the secreting or basically
23 obtaining, secreting, transfer, concealment of assets and
24 expenditures of money.

25 Q Was there any information that you were able to glean

1 from Government Exhibits 230 to 329 that reflected financial

2 affairs?

3 A Well, as I recall, some of these notes were notes
4 that -- primarily that I believe were in Dan Leveto's
5 handwriting relative to directions or instructions on how he
6 was to carry out certain procedures in this scheme.

7 Also, I remember seeing notes, handwritten notes
8 which also I believe were in his handwriting indicating how
9 funds would go from the U.S. to foreign accounts, eventually
10 come back to the United States.

11 Q Did any of those notes also include the names of
12 individuals and/or entities that are reflected in your
13 affidavit as part of the overall scheme?

14 A Yeah. I believe that the Center Company and
15 Edge Co., Box Elder, and some of the individuals, Don Turner
16 and Paul Harris, and so forth and so on, names were reflected
17 in those notes.

18 MR. VORACEK: Your Honor, the government moves for
19 the admission of Government Exhibit H.

20 THE COURT: H is admitted.

21 Q Sir, just to clean up loose ends, do you have Government
22 Exhibit I in front of you?

23 A Yes.

24 Q And what is Exhibit I?

25 A Exhibit I appears to be a drawing that -- of the

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1 Edgewood Drive residence. That would have been done for us

2 by Kathy Kalustian.

3 MR. VORACEK: Your Honor, the United States moves

4 for admission of Government Exhibit I.

5 THE COURT: I is admitted.

6 Q Sir, after the conclusion of the search warrants on

7 May 2nd, 1996, you continued your investigation of Daniel

8 Leveto?

9 A Yes.

10 Q Did you issue summonses in the case?

11 A Yes.

12 Q What types of summonses did you issue? Can you explain

13 that?

14 A Well, Form 2309 is an IRS summons which is used to

15 compel testimony or used for compelling the production of

16 records which is enforceable, I believe, in Federal Court,

17 and these are typically used in administrative criminal

18 investigations to obtain evidence needed.

19 Q Sir, I ask you to look at Government Exhibit Q.

20 A T as in Tom?

21 Q I am sorry. Q.

22 A Q?

23 Q Q as in queen.

24 A Okay.

25 Q Do you have that, sir? What is that exhibit, sir?

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1 A This appears to be a schedule of the summons that were
2 served in this investigation by either myself or other
3 individuals.

4 Q All right. It's a summons to individuals and/or
5 entities?

6 A Correct.

7 Q And what generally is requested in summonses?

8 A Well, it could be a summons for testimony or a summons
9 for the production of records or it could be for both. Okay.

10 There was a number of records that -- although we had
11 executed search warrants, there were still a number of
12 records that we needed to prove -- to finish proving the

13 criminal case.

14 I mean, some of the records that we seized were
15 incomplete, so forth and so on, and we had leads to some
16 records. We had to interview people, get testimony relative
17 to the transactions from some of those records.

18 Q Now, at the time that those summonses, as reflected in
19 Government Exhibit Q, were issued, had the Department of
20 Justice taken over the investigation of the case?

21 A No.

22 Q The case had not been referred -- at those times that
23 are reflected on the summonses, it had not been referred to
24 the Department of Justice?

25 A No. I mean, we had probable cause to execute search

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1 warrants, but by no means were we finished with the criminal
2 investigation and ready to make a referral for prosecution.

3 Q After a referral of prosecution is made to the
4 Department of Justice, may the IRS still continue to issue
5 summonses?

6 A No.

7 Q So, is it your testimony then that all the summonses

8 that are reflected in Government Exhibit Q predated the

9 referral of the case to the Department of Justice?

10 A To the best of my knowledge, at least the ones I served

11 and I don't believe -- you know, without seeing the exact

12 date of the referral, I know the ones that I did, basically

13 up and through the beginning of 1998, there was no referral

14 made to the Department of Justice.

15 Q Did you leave the investigation at sometime in 1998,

16 agent?

17 A Yes, I did.

18 Q And why did you leave the investigation?

19 A There was an opportunity for a supervisory position in

20 the Pittsburgh office. Basically, I was out of the

21 investigation probably from the beginning of 1998. I was

22 acting as supervisor there for a few months and then later

23 was promoted to the job full time, I believe, in late July.

24 Q Did another agent take over the investigation of

25 Dan Leveto at that time?

1 A Yes. Richard Adams took over the investigations. He

2 was the most knowledgeable and assisted me most in the course
3 of the investigation.

4 Q And that was sometime during the 1998 year?

5 A Yes.

6 Q Sir, I ask you now to look at Government Exhibits R
7 and S.

8 A Okay.

9 Q What are those documents, sir?

10 A These are copies of summonses that I served to the
11 accounting firm of Maloney, Reed, Scarpitti & Company in
12 Edinboro relative to this investigation. One is dated
13 May 30th -- or no. I'm sorry.

14 One was served May 2nd, 1996. That would be
15 Exhibit R. Exhibit S was served June 6th of '97.

16 Q Sir, when a summons is issued by the IRS, is the
17 taxpayer notified of the issuance of that summons?

18 A Not on every summons. There are certain summons
19 where -- served on individuals or firms that were considered
20 to be third-party record keepers. And in this instance, this
21 accounting anywhere was Daniel Leveto's tax return preparers.
22 They would fall into that category. So, notice was required

23 to be served at that time.

24 Q So, when we look at Government Exhibits R and S, the

25 summonses to the accounting firm, Daniel Leveto was sent

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1 notice of those summonses.

2 A Yes. I certified that I gave him notice in both

3 instances.

4 Q Let's look at Government Exhibit R.

5 A Yes.

6 Q When was notice provided to Daniel Leveto of that

7 summons?

8 A May 3rd, '96, at four o'clock in the afternoon I would

9 have mailed it to him.

10 Q Do you have any other information that Daniel Leveto

11 received notice of that summons?

12 A Yes. Later, after he had obtained Leonard Ambrose as

13 his counsel, we had a meeting and discussion with him. And

14 at that time, I recall he had the Attorney Ambrose ask

15 questions and bring up the fact that Dr. Leveto had provided

16 him with copies of notices which were served, summons that

17 were served on the Maloney, Reed, Scarpitti & Company and he

18 had inquired about records that were obtained pursuant to
19 that summons.

20 Actually, what happened in the first summons,
21 because I believe the conversation was in the fall of '96,
22 there only had been one summons served to that time.

23 Q And as to Government Exhibit S, another summons to the
24 accounting firm, was Daniel Leveto notified of the issuance
25 of that summons?

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1 A Yes. I certified that I notified him.

2 Q And when would he have been provided with notice?

3 A June 10th, '97, one-fifty in the afternoon.

4 MR. VORACEK: The United States moves for the
5 admission of Government Exhibits Q, R and S.

6 THE COURT: Q, R and S are admitted. I may have
7 missed it, but I don't have -- I have D and I as -- wait a
8 minute. E and F as having been identified by the witness,
9 but not offered in evidence. Maybe I missed it.

10 MR. VORACEK: That is my fault, Your Honor. The
11 government moves for the admission of Government Exhibits E

12 and F.

13 THE COURT: Okay. E and F are admitted. And I
14 think that's everything on this list.

15 THE CLERK: Your Honor, do you have I?

16 THE COURT: I have I as having been admitted.

17 MR. VORACEK: Your Honor, the United States has no
18 further questions of Agent Lapina at this time.

19 THE COURT: Okay. Let's take a ten-minute break.
20 We'll reconvene at, say, twenty to twelve.

21 (Court recessed at 11:25 a.m.)

22 (Court reconvened at 11:40 a.m.)

23 THE COURT: Be seated, please.

24 Okay, Mr. Leveto -- Dr. Leveto, you may
25 cross-examine.

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1 MR. LEVETO: Okay, Your Honor, I would just like to
2 let the Court know, and make sure that it's all right, that I
3 really would like to recall Agent Lapina after the
4 government's case in chief because he is going to be my
5 primary witness.

6 For cross, I have a few questions for him, but I

7 would just like to make sure that I can do that.

8 THE COURT: Okay. You realize that calling him as
9 your witness means you have to accept everything he says as
10 true?

11 MR. LEVETO: Yes, Your Honor.

12 THE COURT: Okay.

13 CROSS-EXAMINATION

14 BY MR. LEVETO:

15 Q Agent Lapina, you had testified, and I would just like
16 to clarify for the record that you testified today that in
17 your assembling of the items to be seized that, in your
18 words, I believe it's an all records search, is that correct?

19 A I don't believe that to be correct.

20 Q Okay. Could we -- okay. So, you are saying that
21 Exhibit B is not an all records search?

22 A Exhibit B relative to the residence at 388 Edgewood
23 Drive?

24 Q Well, I am saying actually Exhibit B to either one.
25 They are both exactly the same. So, I think that the

1 question generally is to both of them.

2 A Well, the records that were articulated in Exhibit C is

3 what was to be seized.

4 Q Oh, I am sorry. Exhibit C. Exhibit C then.

5 A Okay.

6 Q I am getting my exhibits confused with yours. Okay,

7 Exhibit C. Items to be seized. That's the heading?

8 A Yes.

9 Q All right. So, it was your term that it was an all

10 records search?

11 A The records that were reflected on here?

12 Q Yes.

13 A I don't know what you mean by "all records."

14 Q Okay. I believe that that's what your testimony was,

15 but we'll let that go. We'll go with that.

16 Also, Agent Lapina, you testified that you had

17 prepared the application and affidavit?

18 A Yes.

19 Q And you said you did not prepare the search warrants,

20 that they were prepared by the United States Attorney?

21 A That's correct.

22 Q Could you tell me who that United States Attorney was?

23 A Well, the AUSA that I had dealt with during that
24 timeframe was James Donovan.

25 Q James Donovan?

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1 A I assume that he's the one that prepared them.

2 Q Okay. Okay. Agent Lapina, now I am a little bit
3 confused. Perhaps you can help me out. On Government
4 Exhibit I, No. 4, this -- I believe this is your affidavit
5 that was just prepared the 10th of August?

6 A D? The affidavit itself?

7 Q Yes. The affidavit.

8 A Okay.

9 Q E. Your affidavit.

10 A D, yeah, as in dog.

11 Q E as in Edward?

12 A Oh, E?

13 Q I am sorry. Maybe I'm not coming through clearly.

14 A Okay. Sorry.

15 Q I'm a little bit confused when I read paragraph No. 4,
16 especially in light of the importance of this.

17 Could you perhaps clarify that for me?

18 A Well, that statement, "I prepared the search warrants,"

19 I did not prepare the search warrants. That's inaccurate.

20 Q So, this affidavit of yours --

21 A Exhibit A and Exhibit B, I did not personally prepare.

22 Q Okay. So, what you are saying is what you swore to on

23 the search warrant isn't correct? Or on the affidavit. I'm

24 sorry. That's what you are telling me?

25 A Well, I don't believe I swore to this information in the

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1 affidavit.

2 Q It's an affidavit, Agent Lapina.

3 A I signed it and it was notarized and it was verified on

4 my part.

5 Q And if you look on the last page, it says: Subscribed

6 and sworn, I believe, to before me this 10th day of August?

7 A Yeah. But, I was not put under oath by the notary.

8 Q I understand. Okay. So, it's kind of like it depends

9 on what the definition of his is. Okay. Thank you.

10 Okay. Thank you. Next I would like -- you had

11 testified that there was -- and this is another very, very

12 important thing. You had testified that there was an
13 affidavit on the search site. Perhaps -- a draft perhaps?
14 A I testified that I provided the team leader and
15 assistant team leader with an affidavit, a draft of the
16 affidavit at the search meeting. You know, what they did
17 with it -- I can't say that they actually had it with them.
18 I would assume that they did, but --
19 Q Okay. So, then saying that it was at the search site,
20 you are assuming that, so that's really not something that's
21 factually here, is that correct?
22 A I would assume that they had it there with them.
23 Q I see.
24 A For reference purposes.
25 Q Okay. And you had referred to a discussion about

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1 reading me noncustodial rights, and you had said that it's
2 customary in an administrative criminal investigation?
3 A That's right.
4 Q And I'm a little bit confused about that. That's --
5 could you explain to me what an administrative criminal

6 investigation is?

7 A Well, there is two types of ways we can conduct criminal
8 investigations. One is through the administrative process
9 and one is through the grand jury process. This was not a
10 grand jury situation which required the issuance of
11 subpoenas. In a grand jury investigation, it's the
12 discretion of the U.S. Attorney assigned whether or not any
13 rights are read to individuals in noncustodial situations.

14 However, for an administrative case, which is an
15 IRS case internally, that basically is the policy, that when
16 you interview the subject of the investigation before
17 proceeding with the interview, you advise them of
18 noncustodial -- him or her of his noncustodial rights and
19 make sure they acknowledge that they understand those rights.

20 Q Okay.

21 MR. LEVETO: Thank you. I would like to enter
22 Exhibit No. 1.

23 THE COURT: I mean, were you going to ask him about
24 that?

25 MR. LEVETO: Yes.

1 Q Agent Lapina, do you recognize this page?

2 A Yes. This looks like part of our handbook which was
3 current policy at the time as far as summonses provisions.

4 Q Yes. And you speak of your familiarity with Title 26
5 and your authority to issue summonses. I believe that it's
6 provided here on this page in No. 361, if I'm not mistaken,
7 is that correct? There are a number of statutes listed
8 there?

9 A Right.

10 Q And in this case, we're actually talking about
11 third-party summonses. Would you agree with that?

12 A What situation in particular are you talking about?

13 Q Well, the summonses that you testified about today.

14 A Yes.

15 Q They pretty much were third-party summonses, is that
16 correct?

17 A Yes.

18 Q Okay.

19 A Well, third party in the classification of when notice
20 has to be provided? I don't believe all of them fell into
21 that classification.

22 Q Okay. Let's -- we'll be more specific and say at least

23 those to James Scarpitti and perhaps an attorney, those are

24 third parties, is that correct?

25 A I would agree, yes.

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1 Q Okay. So, by this listing of statutes here, we know

2 that we have, or perhaps you'll confirm with me, that

3 IRC 7602, examination of books and witnesses, and 7609 IRC,

4 special procedures for third-party summonses are primarily

5 what we are talking about.

6 MR. LEVETO: I would like to admit Exhibits 2

7 and 3.

8 THE COURT: You can just give them directly to the

9 witness and then have him tell us what they are.

10 A This appear to be -- Exhibit 2 appears to be from

11 weslaw.com. Exhibit 3 appears to be from weslaw.com. dated

12 August of this year about relationship to 7602 and 7609 of

13 the Internal Revenue Code.

14 Q Do you recognize those as those two statutes?

15 A Yeah.

16 Q And these pretty much are your summons authority, is

17 that correct, Agent Lapina, as you understand it?

18 A Repeat the question, please?

19 Q Are these what you would tell me or anyone that would

20 say, Agent Lapina, how do you have the authority, the

21 statutory authority to execute summonses for third parties?

22 A Yes, I believe it would be found in these sections here.

23 Q Okay. So, could you look at, I think, 7602? Is that

24 Exhibit 2, I believe?

25 A Yes, it is.

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1 Q Could you look at Exhibit 2, 7602(c)? This is the first

2 place that one would have any basically title notice of

3 contact of third parties. And this is kind of a short

4 paragraph, but it's within the general statute of examination

5 of books and witnesses, speaking in a cursory fashion on

6 third-party summonses.

7 Would you agree with that, if you could look at

8 that, please?

9 A Paragraph 3-A, B and C?

10 Q No. Paragraph C.

11 A C, right.

12 Q Yes. So, within this general statute of examination of
13 books and witnesses, we have C, which is notice of contact of
14 third parties?

15 A Right.

16 Q And then it has exceptions. In other words, this
17 subsection shall not apply, okay, and could you tell me what
18 No. 3 says in the C category?

19 A It says it right here, C, with respect to any pending
20 criminal investigation.

21 Q Okay. Would you, Agent Lapina, perceive or believe that
22 a search and seizure, a judicially approved search and
23 seizure would have anything to do with a criminal
24 investigation?

25 A The search and seizure is part of a criminal

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1 investigation.

2 Q Is it part of a criminal investigation?

3 A Yes.

4 Q Okay.

5 A In this instance, it was.

6 Q Okay. So, notice of contact of third parties, this
7 subsection does not apply then, is that correct? In other
8 words, the authority to issue a summons, you would not get it
9 from here if there is a criminal investigation occurring, is
10 that correct?

11 A No, that's inaccurate. If you read Exhibit 1, okay,
12 paragraph under Section 362, paragraph four, says, the
13 Supreme Court held that although investigation may result in
14 a recommendation of criminal prosecution be instituted
15 against a taxpayer, an Internal Revenue summons may be issued
16 under IRC 7602 in aid of an income tax investigation if it is
17 issued in good faith prior to recommendation for criminal
18 prosecution.

19 Q Agent Lapina, do you know what good faith means in this
20 paragraph?

21 A Yes.

22 Q Could you explain it to me?

23 A Well, in this instance, I had good faith in issuing the
24 summonses because I needed additional evidence to help me
25 prove the criminal charges, the criminal case.

1 Q Okay.

2 A Okay? It wasn't -- I mean, I felt that when I issued it
3 that I was following all the procedures that were applicable.

4 Q Okay. Let's get back to the law. Would you go along
5 with the concept that Subsection C would not apply during the
6 time that you execute a search and seizure because it is with
7 respect to a criminal investigation?

8 A I really don't understand your question. You know,
9 notice would have had to have been given to thirty-party
10 subjects to the investigation, so to speak, in this case when
11 it was so applicable.

12 Q Let me see if I can put this another way.

13 I don't think I have the cite. Sun, I believe it's
14 S-u-n, Baltimore v Getz(Sp), and I don't have the cite, where
15 the Court unequivocally stated that a search and seizure is
16 certainly a criminal proceeding and of the most adverse at
17 that.

18 What I am trying to establish here, Agent Lapina,
19 is that Subsection C does not apply with a pending criminal
20 investigation. That doesn't say anything about the rest of
21 that 7602 because it does apply, but that's applying to the

22 taxpayer himself. We are talking about notice of third

23 parties.

24 A I guess are you saying that it doesn't authorize the

25 issuance of summonses when you have a pending criminal

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1 investigation? Is that what you are trying to say?

2 Q That's what Subsection C seems to be implying. Is that

3 correct?

4 A Well, yeah, what it seems to be saying here, I don't

5 agree with.

6 Q But --

7 A I know what the policy was and the procedures for

8 serving summonses.

9 Q Okay. I'm interested in policies and procedures, but

10 I'm really most interested in the law. So, why don't we --

11 THE COURT: And that really is the function of the

12 Court, the Judge. You know, what you are raising now are

13 questions of law. This Agent Lapina doesn't purport to be a

14 lawyer. I don't know if he is or not.

15 But, I think what you are raising is a question

16 that should be argued to me and the government can make their

17 argument in the same direction. I don't think it has to come

18 from the witness.

19 MR. LEVETO: Okay, Your Honor.

20 THE COURT: I mean, you can get him to identify

21 this as being a regulation or directive, or whatever, but his

22 interpretation is something best left to the Court.

23 MR. LEVETO: Okay.

24 Q Let's move on from here then, Agent Lapina. If you

25 could go to Exhibit 3.

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1 Could you identify that statute? Are you familiar

2 with that statute?

3 A Internal Revenue Code 7609.

4 Q Yes.

5 A Special procedures for third-party summonses.

6 Q Okay. Could you go to 26, USC, 7609(c)(2)?

7 A Okay. Under exceptions?

8 Q Yes. This appears to me that this section shall not

9 apply to any summons, and then it lists the exceptions that

10 this section perhaps won't impart authority to.

11 Could you read E-1?

12 A E-1 says -- well, two says the section shall not apply
13 to any summonses. E-I-B(Sp) indicates issued by criminal
14 investigator or the IRS in connection with investigation of
15 an offense connected with the administration of enforcement
16 of the Internal Revenue laws.

17 Q Okay. That would appear to kind of support what we
18 talked about in 7602, but we don't have to go any further
19 with that.

20 I have just one more question, Agent Lapina. I'm
21 not sure which exhibit it is, the first one to Mr. Scarpitti,
22 the summons. It is Exhibit R. Government Exhibit R.

23 A Yes.

24 Q The second page of Government Exhibit R, your
25 certification of notice, is it custom and policy to use

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1 regular mail?

2 A No. Typically, you are supposed -- the policy is that
3 they send it certified or registered mail to the last known
4 address of the noticee.

5 Q Okay. Very good. Thank you, Agent Lapina.

6 THE COURT: Any redirect, Mr. Voracek?

7 MR. VORACEK: Just one question, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. VORACEK:

10 Q Why did you use regular mail, Agent Lapina?

11 A Well, at the time of -- this summons notice was served

12 was -- I believe it was five three. It was a Friday

13 afternoon about four o'clock. I had a number of things that

14 had transpired during the course of the day. I wanted to get

15 the notices out because have three days and, at that time,

16 more than likely, I didn't have any certified cards, the

17 green cards which to attach to the mail. So, I did the best

18 job I could. I sent them as is.

19 MR. VORACEK: No other questions, Your Honor.

20 THE COURT: Okay. Thanks, agent. You may step

21 down, but you have to remain available for Mr. Leveto.

22 (The witness was excused.)

23 THE COURT: Were you moving for the admission of

24 your Exhibits 1, 2 and 3?

25 MR. LEVETO: Pardon?

1 THE COURT: Were you moving for the admission of
2 your Exhibits 1, 2 and 3?

3 MR. LEVETO: Yes, Your Honor.

4 THE COURT: One, two and three are admitted.
5 Stand here and be sworn, please.

6 THE CLERK: Can you raise your right hand?

7 * * * * *

8 RICHARD ADAMS, having first been duly sworn,
9 testified as follows:

10 THE COURT: Would you have a seat up here, please,
11 and give us your name and spell your last name.

12 THE WITNESS: My name is Richard Adams. A-d-a-m-s.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION

15 BY MR. VORACEK:

16 Q Mr. Adams, are you employed?

17 A Yes. I am a Special Agent with the Criminal
18 Investigation Division of the Internal Revenue Service.

19 Q And how long have you been so employed?

20 A Approximately ten years.

21 Q What are some of your duties as a Special Agent of the

22 Internal Revenue Service?

23 A My duties would be to investigate violations of

24 Title 26, Internal Revenue laws, and some money laundering.

25 Q As part of your responsibilities as an IRS Special

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1 Agent, did you investigate Daniel Leveto?

2 A I became involved in the case. I did some work in the

3 initial stages of the case. But, in -- I believe it was July

4 of 1998, I took over for case Agent Robert Lapina when he was

5 promoted to a manager position in Pittsburgh.

6 Q After you became the case agent on the case in 1998, did

7 you at some point prepare a recommendation for prosecution to

8 the Department of Justice?

9 A Yes. The -- primarily, once I took over, a lot of the

10 aspects of the case had been pleaded, I completed a number of

11 schedules and put the -- a report together, yes.

12 Q Was your case -- was the investigation of Dr. Leveto

13 ultimately referred to the Department of Justice to the best

14 of your knowledge?

15 A Yes.

16 Q Do you recall when that would have been?

17 A I believe my report was submitted and approved in -- I

18 think it was June of 1999. And then I believe the case after

19 that was referred over possibly in September.

20 Q Now, I believe you stated earlier that you were involved

21 to a certain degree in the investigation of Dr. Leveto prior

22 to you becoming the case agent on the case in 1998?

23 A That's correct.

24 Q And did part of your involvement include the

25 participation and execution of search warrants at

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1 Dr. Leveto's residence and office?

2 A Yes. On May 2nd of 1996, I was involved in the search

3 warrants.

4 Q What was your role in the search warrants?

5 A My primary role was to be part of the entry team and to

6 interview the subject in this case.

7 Q Were you able to review the actual search warrants as

8 part of your execution of the warrants?

9 A Yes.

10 Q Did you see both the warrants for the office and the

11 home as well?

12 A Yes, I did.

13 Q Did you also see a copy of the items -- of the list of

14 items to be seized attached to both of the warrants?

15 A Yes. Both warrants had copies of items to be seized

16 attached to each one of them, yes.

17 Q And did you also participate, Agent Adams, in a

18 pre-search warrant meeting?

19 A Yes. On May 1st, after the search warrants were signed

20 by the magistrate, a meeting was held in the FBI office on

21 State Street, 717 State Street, where the members of the

22 teams that were going to be involved in the search warrants,

23 we met there.

24 Q And was an explanation of the potential -- of the

25 possible crimes and the items to be seized presented to the

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1 agents during the meeting?

2 A Yes. Case Agent Lapina went over the -- essentially

3 when we meet for those, we go over the plan. In other words,

4 set up the teams that were going to be involved in the

5 searches. Since we had two different locations, we went over
6 the particular plans.

7 At that point, there was a discussion of the
8 violations and of items to be seized, as well as a general
9 overview of the case.

10 Q Now, on the morning of the search, of the execution of
11 the warrants May 2nd, 1996, were you at the business
12 residence, or where was your location?

13 A I was involved in the search warrant at the business.

14 Q Do you recall approximately what time the search
15 commenced at the business?

16 A I would say I believe the time was to be around 6:20, I
17 think, is when Dr. Leveto arrived at the business and we
18 pulled in behind him.

19 Q And you had an encounter with Dr. Leveto at that time?

20 A At that point, we came -- Agent Lapina, myself, we were
21 with the -- I believe it was a Vernon Township police
22 officer. We came down in his marked cruiser along with the
23 members of the other team. They came down in other cars that
24 followed us.

25 I came up to the door with Agent Lapina and we

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1 approached Dr. Leveto there, provided him with copies of the
2 search warrant, asked for his permission if he would open the
3 door, and he agreed to do that.

4 Q Was Dr. Leveto also provided with a list of the items to
5 be seized as part of the search warrant?

6 A Yes. That was attached to the search warrant.

7 Q It was attached, stapled or paper clipped to the
8 warrant?

9 A It probably would have been stapled to it.

10 Q And did Dr. Leveto then let you into the business at
11 that time?

12 A Yes. He had unlocked the door and then we entered the
13 business.

14 Q Now, what was your role during the search of the
15 business on May 2nd?

16 Did you participate in searching?

17 A Essentially, I was not involved in the search.

18 Basically, what I ended up doing is, once we got in and we
19 discussed -- there were some procedures that we discussed
20 with Dr. Leveto regarding the execution of the search warrant

21 that was to be done at the house.

22 Once we decided on how those were going to be
23 approached, Mr. Lapina, myself and Dr. Leveto went into a
24 room and we started to interview Dr. Leveto.

25 Q Now, did you explain to Dr. Leveto that he didn't have

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1 to be interviewed if he didn't want to at the time?

2 A Yes. We read him his noncustodial rights and explained
3 to him that he had the right to terminate the interview at
4 any time. He didn't have to answer any questions.

5 We asked if he understood those rights and he told
6 us he did.

7 Q Was Dr. Leveto cooperative at that point in your
8 opinion?

9 A He was very cooperative, yes.

10 Q Did you remain then at the business the entire day or
11 did you go elsewhere?

12 A No. At approximately -- what was decided when we went
13 in, we held the other team up because his kids were at the
14 house. We gave him give him the option of, we could send

15 them in right away or if we waited at the business until they

16 left, then what we would do is, that team would go in after

17 we were notified that the kids had left to go to school.

18 I think it was around 8:00 o'clock, we were

19 notified, and Dr. Leveto asked us if he could go to the house

20 and be there so he could explain this to his wife, so he

21 could let us into the house, explain to his wife what was

22 going on. And he asked if we could do that and we said we

23 could.

24 So, we left the business, I think it was

25 approximately 8:00 o'clock, and drove to the staging area

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1 where the second team was waiting.

2 Q So, Dr. Leveto agreed and, in fact, asked to actually go

3 to the residence?

4 A That's correct. He said he wanted to go there and be

5 there for his wife to explain what was going on. And at that

6 point, myself, I believe it was Agent Lapina and

7 Agent Wirth we put him into the car, one of our government

8 cars, and we drove him over to the staging area.

9 Once we arrived at the staging area, Dr. Leveto

10 seen a marked car there and he asked us if we would not take
11 that marked unit to his house because he didn't really want
12 the neighbors to see a car there.

13 Agent Lapina said, that's fine, notified the agent
14 who was handling that team to ask the police officer to go
15 ahead and leave. So, he did.

16 Q Were you present with Dr. Leveto when he encountered his
17 wife at the residence on May 2nd, 1996?

18 A Yes, I was. Once the police officer left, we drove --
19 the team drove down to the residence.

20 Myself, Agent Lapina and Agent Wirth, I think, I
21 believe along with Agent Hines, went up to the house with
22 Dr. Leveto. He let us into the house. He met his wife at
23 the front door and explained to her why we were there.

24 We presented them with the search warrant and
25 explained the search warrant and then the teams entered the

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1 residence.

2 Q Did Dr. Leveto then decide to stay at the residence the
3 rest of the day?

4 A No. Dr. Leveto told us he would like to go back to the

5 business. So, we were only there a few minutes and we left

6 there and escorted him back to the business.

7 Q Do you have any knowledge of whether or not a search did

8 proceed at the residence that day?

9 A Yes, there was a search done of the residence.

10 Q And do you know how long the search actually continued

11 at the residence?

12 A I can't say exactly what time they finished there.

13 Q Well, was the search at the residence concluded before

14 the children arrived home from school?

15 A Yes. It was my understanding that it was, yes.

16 Q Now, you went back to the business then with Dr. Leveto?

17 A That's correct.

18 Q What happened next?

19 Did you attempt to question Dr. Leveto further?

20 A Well, we returned to the business. We went back into

21 the room with Dr. Leveto and continued to question him. He

22 said he would continue to answer questions, so we talked to

23 him there.

24 Q How long did you interview Dr. Leveto?

25 A I believe that interview lasted until approximately one

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1 o'clock, when we were pretty much done. And at that point,
2 we stopped, and I believe we had pizza brought over to the
3 business because of the length of time we were there.

4 We offered some to Dr. Leveto. He declined. He
5 didn't want to eat. We stayed out there for a little while,
6 we talked, and we went back in with -- we received some
7 documents that had been found at the business and we asked
8 Dr. Leveto if we could question him again, and I think that
9 started around 1:30 until 2:30.

10 Q Dr. Leveto terminated the interview himself?

11 A Yes, he did.

12 Q And, in fact, the interview was terminated at that
13 point?

14 A That's correct.

15 Q Do you know if documents were seized from the business?

16 A Yes, I am aware that documents were seized.

17 Q What was -- in general terms, what was your
18 understanding of the types of documents to be seized at the
19 business and the residence on May 2nd, 1996?

20 A Well, according to the search warrant and the items to
21 be seized, we were looking for any financial documentation
22 that would support the violations of Title 26 and also the
23 conspiracy charge of 371.
24 Q Was there a timeframe set up as far as documents to be
25 seized?

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1 A Well, we were aware of essentially the review of
2 Dr. Leveto and Mrs. Leveto's tax returns and noticed that in
3 '91, there was a change in the income and the reporting of
4 the business. After 1991, we knew that the income
5 substantially was reduced.
6 So, what we would do, since we are looking at a
7 possibility in these cases of a net worth, you would take
8 financial records and you would look at them for possibly two
9 to three years prior to that.
10 So, we might look from '98 through the present time
11 because you want to have a starting point of an individual's
12 assets, their liabilities, their expenditures, and then you
13 work forward from there.
14 Q And how about subsequent to the tax returns under

15 review, did you also seize evidence relating to time period

16 after you had tax returns?

17 A Well, right. In the particular case, we were aware that

18 there were foreign bank accounts being used and the

19 possibility of nominee names. We had some names of other

20 possibly businesses or individuals that were involved.

21 So, we were looking for anything that involved the

22 possibility that we have a conspiracy charge that we believe

23 continued, plus the fact that '95 was in -- at that point, it

24 was continuing on forward also.

25 Q You believe that the conspiracy was continuing.

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1 Was that explained to you at the pre-search meeting

2 or did you read that in the affidavit?

3 A Well, it probably would have been both for me because I

4 was involved with the affidavit to some extent and we talked

5 about it at the pre-op meeting beforehand, yes.

6 Q And is part of your belief that it was continuing based

7 upon evidence of mail covers that were recently performed at

8 the business and the residence?

9 A Yes, that would be correct, along with other

10 investigative means, yes.

11 Q How long did the search last at the business?

12 A Well, we went in at 6:20, and I believe we concluded the

13 interview with Dr. Leveto -- I believe I said it was around

14 2:30 when we finished with that. I think after that,

15 Agent Lapina left the business for a short time. I believe

16 at that point, the search itself was completed. We were

17 awaiting downloading of some records from the computers.

18 What the attempt was there, was to image the

19 computers, get the information off there and still leave the

20 computers there intact so the business could continue to

21 operate.

22 I believe that didn't finish until sometime after

23 four, 4:30; somewhere around there.

24 Q When you were dealing with the computers, though, was

25 the business still able to function as an enterprise even

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1 though you were still there working with the computers?

2 A I believe all the agents, except for myself,

3 Agent Lapina, and I believe it was Agent Grover, who was

4 involved -- G-r-o-v-e-r, I believe, he was the agent who was
5 involved in downloading the information from the computer so
6 he was still in the back room, was in the back office along
7 with myself, and I think Agent Lapina, who had left for a
8 short time, then returned.

9 I think by 2:30, most everybody was out of the business. I
10 think at that point we said that we were pretty much done.

11 MR. VORACEK: I have no further questions,
12 Your Honor.

13 MR. LEVETO: Yes. Just a couple of questions.

14 CROSS-EXAMINATION

15 BY MR. LEVETO:

16 Q Agent Adams, was the affidavit circulated around or gone
17 over at the pre-raid meeting on May 1st?

18 A I don't believe the affidavit was circulated. I believe
19 that the -- from what I recall, the case was just discussed
20 with the agents. The affidavit had been sealed.

21 Q It had been sealed?

22 A Yes.

23 Q And how about at the raid site, or either raid site, was
24 the affidavit present on either raid site?

25 A To my knowledge, it was not.

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1 MR. LEVETO: No further questions.

2 THE COURT: Thanks, Mr. Adams.

3 (The witness was excused.)

4 THE COURT: Well, this looks like a good time to

5 stop for lunch, so we'll stop now and reconvene at 1:30.

6 (Court recessed at 12:25 p.m.)

7 (Court reconvened at 1:35 p.m.)

8 THE COURT: Good afternoon. Be seated, please.

9 Okay, Mr. Voracek, do you want to call your next

10 witness?

11 MS. CALVIN: Yes, Your Honor.

12 THE COURT: Or Ms. Calvin.

13 MS. CALVIN: We call Thomas Demko, please.

14 THE COURT: I am sorry.

15 MS. CALVIN: Thomas Demko, please.

16 THE COURT: Come forward and be sworn, please.

17 THE CLERK: Would you raise your right-hand,

18 please?

19 * * * * *

20 THOMAS DEMKO, having first been duly sworn,

21 testified as follows:

22 THE COURT: Have a seat up here, please, give us

23 your name and spell your last name.

24 THE WITNESS: Thank you, Your Honor. My name is

25 Thomas Demko. D, as in David, e-m-k-o.

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1 THE COURT: Thank you.

2 DIRECT EXAMINATION

3 BY MS. CALVIN:

4 Q Mr. Demko, where are you currently employed?

5 A I'm employed with the Internal Revenue Service, Criminal
6 Investigation.

7 Q What position do you hold there?

8 A Currently, I'm a supervisory Special Agent.

9 Q And what are some of your duties as a supervisory
10 Special Agent?

11 A I'm assigned to review the work of the Special Agents
12 that are assigned to my group.

13 Q And how long have you held that position?

14 A Approximately nineteen years.

15 Q And have you held any other positions with the Internal
16 Revenue Service?

17 A Yes. Prior to becoming a supervisory Special Agent, I
18 was a Special Agent in -- roughly altogether, I have about
19 twenty-five years with the Criminal Investigation of the
20 Internal Revenue Service.

21 Q Now, as part of your responsibilities when you were a
22 Special Agent, did you investigate violations of Title 26?

23 A As an agent, yes, I did.

24 Q And what other responsibilities did you have when you
25 were an agent?

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1 A Well, as an agent, I not only investigated, I was called
2 upon to perform other duties, such as the execution of search
3 warrants, drafting of affidavits for search warrants, and
4 things of that nature, that deal with violations of Title 26
5 statutory provisions.

6 Q And did you investigate other financial crimes as well?

7 A Yes, I did.

8 Q Now, as part of your job responsibilities now, do you

9 review affidavits for search warrants before they are
10 presented to a Magistrate or before any search warrants are
11 executed?

12 A Yes, I do.

13 Q And in 1996, was that part of your role?

14 A Yes, it was.

15 Q Were you involved, in any way, in the review of the
16 search warrant affidavit for the business and the residence
17 of Daniel Leveto?

18 A Yes, I was.

19 Q Was there approval process for search warrant affidavits
20 in place within the IRS in 1996?

21 A Yes, there was.

22 Q And you're familiar with that process?

23 A Yes, I am.

24 Q Would you describe the process that would have been
25 followed before an IRS Special Agent seeks or executes a

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1 search warrant?

2 A Well, it is the responsibility of the Special Agent to

3 gather the information and draft it in the form of an
4 affidavit, and that affidavit is then given to the front-line
5 manager, which at the time was myself.

6 I would have reviewed that and then I would have
7 forwarded that affidavit to what was termed our district
8 counsel, which are our inhouse attorneys.

9 After their completion of their review process,
10 they then would have forwarded it to the United States
11 Attorney's Office.

12 Q And that's where typically the warrant, itself, would be
13 drafted, the search warrant?

14 A Yes. The agent and then the assigned United States
15 Attorney would sit down and draft it, yes.

16 Q When you were reviewing an affidavit that was submitted
17 to you for review, what would you have been looking for?

18 A Well, as a supervisor, I would have been looking it over
19 for grammatical errors. I would be looking at the content of
20 the affidavit as it relates to probable cause.

21 I would also be looking at the listed items to be
22 seized to make sure that they relate to the alleged violation
23 that we are pursuing.

24 MR. LEVETO: I object, Your Honor. This seems to

25 be more rehashing of the same information that we've heard --

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1 THE COURT: I assume if he was the person that
2 actually did the reviewing, it's appropriate for him to
3 testify.

4 MS. CALVIN: Thank you.

5 BY MS. CALVIN:

6 Q And would you also be checking to make sure that there
7 was, within the affidavit, information from which you could
8 conclude that the evidence that you were seeking would be
9 found at the locations?

10 A Yes.

11 Q And for details such as making sure it was the
12 identifiable location?

13 A That's correct.

14 Q Now, after you would review it, you would send it off to
15 district counsel?

16 A That's correct.

17 Q The person who reviewed it again would be an attorney?

18 A That's correct.

19 Q When it is sent to the U.S. Attorney's Office for

20 formalization, is that considered a referral to the

21 Department of Justice?

22 A No, it is not.

23 Q Why not?

24 A Well, because at that point in time, the referral to the

25 Department of Justice is based upon two different types of

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1 referrals.

2 And those are, when an agent completes an

3 investigation and the agent has made a determination as to

4 the recommendation of a prosecution and the agent has

5 completed the investigation, at that point in time when we

6 give it to our inhouse counsel and they make the referral

7 over to the Department of Justice, at that point in time,

8 that constitutes a referral to the Department of Justice.

9 The other instance would be, when we are conducting

10 an investigation and we decide to convert what we term an

11 administrative investigation into a grand jury investigation,

12 we would then request from the department the approval to do

13 so.

14 And at that point in time, it becomes a referral to
15 the Department of Justice.

16 Q Now, in May of 1996, when the search warrants were
17 executed on Dr. Leveto's home and business, what type of
18 investigation was this?

19 A It was an administrative investigation.

20 Q Are you also familiar with the process and the abilities
21 of the IRS to serve summonses?

22 A Yes, I am.

23 Q And do you know for what purposes administrative
24 summonses can be served?

25 A An administrative summons are served in an

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1 administrative investigation and we use that vehicle to
2 obtain testimonial as well as documentary evidence to either
3 support or disprove the charges that are alleged.

4 Q And do Special Agents have the authority to issue
5 administrative summonses?

6 A Yes, they do.

7 Q During the pendency of a criminal investigation?

8 A That's correct.

9 Q At what point in an investigation would the summonses
10 authority of an agent stop?

11 A Well, the -- we would cease serving summonses at the
12 point in time a referral is made to the Department of
13 Justice.

14 At that point in time, no summonses are to be
15 issued.

16 Q Now, do you know what date that Dr. Leveto's case was
17 referred to the Department of Justice for prosecution?

18 A Yes, I do. September 10th, 1999.

19 Q And up until that point, Agent Lapina was fully within
20 the law to issue administrative subpoena -- forgive me --
21 summonses for this case?

22 A Up until that point, yes, he was within his rights.

23 MS. CALVIN: I have no further questions, Your
24 Honor.

25 MR. LEVETO: Just a couple more questions,

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1 Mr. Demko.

2 THE WITNESS: Sure.

3 CROSS-EXAMINATION

4 BY MR. LEVETO:

5 Q Is it custom and policy to be serve civil summonses at
6 exactly the same time doing a search warrant, executing a
7 search warrant?

8 A When you say "civil summonses," when we are conducting a
9 criminal investigation under the administrative process,
10 during that whole process until such time it becomes a
11 referral to the Department of Justice, we then will use the
12 summonses process to obtain either documentary or testimonial
13 evidence.

14 Q The reason I said "civil summonses" is because they fall
15 under the purview of the civil arm of the Federal Court when
16 they are enforced. And if one can liken the rules with
17 civil -- or the summonses, the administrative summonses, they
18 are very much like rules of civil discovery. At least that's
19 what the Courts say.

20 So, I guess that, that all I would like to know is,
21 who prepared the search warrant?

22 A Who prepared the search warrant?

23 Q Yes.

24 A Robert Lapina. Special Agent Robert Lapina prepared the
25 affidavit for the search warrant.

Demko - Cross

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1 At such time as it cleared the review process and
2 it ultimately went to the United States Attorney's Office,
3 I'm sure Special Agent Robert Lapina and the assigned
4 Assistant United States Attorney would have got together and
5 then put the documents needed to present to the Magistrate
6 for the approval of the search warrant.

7 Q Maybe I didn't totally understand your answer.

8 The face of the warrant itself, that was prepared
9 by who?

10 A I wouldn't know that. I mean, when it's over at the
11 United States Attorney's Office and the Special Agents are
12 putting together the documents, I wasn't present there at the
13 point in time.

14 Q So, you don't know the custom and policy of the
15 preparation of the search warrant, who normally would prepare
16 it?

17 A Well, like I say, the affidavit is what we look at and
18 insure that the probable cause or the items to be seized or

19 the place that the records are allegedly stored at is what we
20 get involved in, and then present all that information to the
21 United States Attorney's Office. And at that point in time,
22 they then would present that to the Magistrate.

23 As to the actual preparation, who did the writing
24 on the particular search warrant, I wouldn't know that.

25 Q Okay. And just for the record, I wanted to clarify, did

Demko - Cross

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1 you call -- that you would say or what you have termed an
2 administrative investigation using both summonses and an
3 administrative criminal investigation, is that correct?

4 A Could you please ask that question again, sir?

5 Q Okay. When you term an investigation being an
6 administrative investigation, that can entail both civil
7 summonses and search and seizure?

8 A Well, when you talk about civil summonses, I get a
9 little bit lost there because the administrative
10 investigation process is still a criminal investigation
11 because that's the line of work we do in the IRS.

12 And in the administrative process, even though it's

13 still a criminal investigation, we utilize the summons

14 vehicle in order to obtain the information that we are

15 seeking.

16 Q Along with a search and seizure? I won't use the word

17 civil summonses. Summons plus search and seizure?

18 A Well, when you say "search and seizure," a search

19 warrant, again, is another vehicle whereby it helps us to

20 obtain the information we are seeking as long as we get the

21 sufficient elements. And what I mean by that is, the

22 probable cause, and also the fact that the records are

23 located at the place that we're looking at, and we present

24 that through our review process.

25 So, I look at a search warrant as another -- I use

Demko - Redirect(By Ms. Calvin) 105

1 the word vehicle like I do with the summons, in order for us

2 to obtain the information both documentary and testimonial

3 that we are looking for.

4 Q Okay. Maybe we have terminology differences here.

5 I guess that I am asking, it's custom and policy to

6 have a posture where you would use summonses and search

7 warrants at the very same time?

8 A Oh, yes. Yes.

9 Q Okay. You did say that you took part in the search, is
10 that correct?

11 A My role in that was, I reviewed the affidavit at the
12 time it was submitted to me. And also on the day of
13 execution, I was at what we term the command post.

14 Usually, I'm on site somewhere at the site in case
15 some problems should arise that I should be aware of.

16 Q I see. And was there a copy of the affidavit of
17 probable cause at either search site?

18 A I don't know.

19 Q Okay. Thank you.

20 MR. LEVETO: That is all.

21 THE COURT: Any redirect, Ms. Calvin?

22 MS. CALVIN: Just one question.

23 REDIRECT EXAMINATION

24 BY MS. CALVIN:

25 Q Is there anything improper about using an administrative

1 summons at the same time that a search warrant is being

2 sought or executed?

3 A No, there is no problem that I am aware of.

4 Q As long as it hasn't already been referred to the

5 Department of Justice?

6 A Correct. The only time that the summons should cease is

7 at the point in time when we make a referral under those two

8 situations that I explained.

9 At that point in time, the services of the

10 summonses must cease.

11 Q So that in this case, it was September the 10th?

12 A 1999.

13 MS. CALVIN: Thank you.

14 THE COURT: Thank you, sir.

15 THE WITNESS: Thank you, Your Honor.

16 (The witness was excused.)

17 MS. CALVIN: Your Honor, our next witness is going

18 to be Frank Falvo. And I should inform the Court that

19 Mr. Falvo is an attorney for the Internal Revenue Service and

20 he has an attorney-client privilege, as recognized under

21 Upjohn and the Third Circuit case of Impounded with the

22 Internal Revenue Service, as to any advice, any

23 communications that were given for purposes of rendering

24 legal advice.

25 However, he was requested to be present by the

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1 defendant, and he is the attorney at district counsel who

2 reviewed the search warrant application and affidavit.

3 THE COURT: Would you come forward, please, and be
4 sworn?

5 THE CLERK: Can you raise your right hand?

6 * * * * *

7 FRANK FALVO, having first been duly sworn,
8 testified as follows:

9 THE COURT: Have a seat up here, please and state
10 your name and spell your last name.

11 THE WITNESS: My name is Frank Falvo. F, as in
12 Frank, a-l-v-o.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION

15 BY MS. CALVIN:

16 Q And, Mr. Falvo, what is your current position?

17 A I'm a senior attorney with the Office of Chief Counsel

18 of the Internal Revenue Service, and my post of duty is in

19 Pittsburgh.

20 Q What's your educational background?

21 A I have an accounting degree from Duquesne University and

22 a law degree from Dickinson School of Law.

23 Q And how long have you occupied your current position?

24 A Twenty-four years.

25 Q And what are some of the duties that you perform in the

Falvo - Direct(By Ms. Calvin) 108

1 position that you hold?

2 A Currently, my position entails all civil tax work,

3 collection, bankruptcy, income estate, excise tax, litigation

4 in the Tax Court, and at this point, it's all civil.

5 Prior to 2000, I was involved in both civil and

6 criminal matters, review of criminal matters on behalf of the

7 Internal Revenue Service at that time.

8 Q Now, did your change in positions occur as a result of

9 reorganization with the Internal Revenue Service?

10 A Yes, it did. In 2000, there was a reorganization and

11 attorneys were either assigned to purely civil or purely

12 criminal.

13 So, as of 2000, all of my work has been purely

14 civil.

15 Q But, in 1996, you were still involved with criminal?

16 A I was.

17 Q Are you familiar with when an agent can serve a summons?

18 A Yes, I am.

19 Q And for what purposes can an agent serve a summons, an

20 administrative summons?

21 A An IRS agent or revenue officer can serve a summons

22 under a number of circumstances.

23 According to the Internal Revenue Code, Section

24 7602, a summons can be served for purposes of determining a

25 liability, tax liability of an individual or corporation. It

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1 can also be for purposes of determining the amount of

2 liability that's owed by a taxpayer.

3 A summons can also be served to aid collection.

4 And, finally, a summons can be served for purposes

5 of investigating violations or offenses involving Internal

6 Revenue laws.

7 Q How long has that been the law?

8 A It's been a law many years with respect to the service
9 of the summons for civil purposes.

10 In 1982, the Internal Revenue Code was amended and
11 one of the changes that was made at that time was to
12 specifically state that in 7602 that a summons could be
13 issued for purposes of investigating criminal cases involving
14 Internal Revenue laws.

15 Q Does a Special Agent have the authority to issue
16 summonses and execute and serve search warrants?

17 A A Special Agent does.

18 Q And can a Special Agent serve an administrative summons?

19 A A Special Agent, according to Section 7602 -- and if I
20 may refer to the code so I can have the proper subsection?

21 7602(a) or 7602(b) provides that a summons may
22 be -- summons may be served for the purposes of acquiring
23 into any offense connected with the administration or
24 enforcement of the Internal Revenue laws.

25 So, that it can be -- a summons can be served by a

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1 Special Agent for purposes of investigating a violation of

2 the tax laws.

3 And under Section 7602(d), that may be done at any
4 time prior to a referral of the case to the Department of
5 Justice.

6 And a referral is defined in 7602(d)(2) as any time
7 prior to a request for a grand jury investigation or at any
8 time prior to recommendation by the Internal Revenue Service
9 that a case be prosecuted by the Department of Justice.

10 So, prior to a determination that a case should be
11 prosecuted, a recommendation made to the Department of
12 Justice, administrative summonses may be issued by the
13 Special Agent.

14 THE COURT: What is the rationale for that rule, if
15 you know?

16 I mean, why couldn't the IRS continue to
17 investigate after it was referred to the --

18 THE WITNESS: I believe that the rationale is, once
19 it's referred to the Department of Justice, administrative
20 investigation should discontinue at that point. And at that
21 point, if there is to be further investigation it should be
22 done through grand jury and the grand jury process and the

23 subpoenas.

24 THE COURT: I mean, is it just to avoid duplication

25 of work or --

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1 THE WITNESS: I don't think it's so much to avoid
2 duplication of work as it is so that the -- that the IRS is
3 not administratively going out and seeking this information
4 at the behest of the Department of Justice when the
5 Department of Justice should be doing it through grand jury
6 process.

7 THE COURT: All right.

8 BY MS. CALVIN:

9 Q Does a referral to the U.S. Attorney's Office requesting
10 a search warrant constitute a referral to the Department of
11 Justice?

12 A It does not. That's not one of the enumerated
13 definitions of a Department of Justice referral.

14 Q Now, you were involved in the review of Daniel Leveto's
15 search warrant application and affidavit?

16 A That's correct.

17 Q And do you know what date the case of Daniel Leveto was

18 referred to the Department of Justice?

19 A It was referred to the Department of Justice for

20 prosecution on September 10th, 1999.

21 Q So, a Special Agent working the case had authority under

22 the law to summon records until September the 10th, 1999?

23 A That's correct.

24 Q And I think you previously stated that Special Agents

25 have the authority to conduct search warrants -- execute

Falvo - Direct(By Ms. Calvin) 112

1 them?

2 A They have the authority to go execute search warrants

3 and also to issue summons. The statutory authority is 7608

4 of the Internal Revenue Code.

5 Q And do you know whether there was an approval process

6 for search warrants in place in 1996?

7 A Yes, there was.

8 Q And would you explain that process?

9 A Yes. A Special Agent would prepare an affidavit and

10 send it to our office, which was the Office of District

11 Counsel.

12 We would -- one of the attorneys in the office
13 would be assigned the case. We would review the case, make a
14 determination as to whether there was sufficient probable
15 cause to recommend that the search warrant be issued.

16 If we made that determination, our office would
17 send a letter to the United States Attorney's Office
18 requesting that the search warrant be issued.

19 If, based upon our review, we determine that there
20 was a sufficient cause or additional evidence was needed, we
21 would make a recommendation to the Special Agent either
22 orally or in writing what additional information may be
23 needed.

24 If that information was not forthcoming or could
25 not be developed, at that point we would reject the proposed

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1 search warrant.

2 Q And what would you do with the affidavit and list of
3 items to be seized after it was submitted to you for review
4 if, in fact, you thought that it had sufficient probable
5 cause and that there was reason to believe that the evidence
6 of the crime could be found at the location sought to be

7 searched? What would normally happen?

8 A We would send that along with our letter to the United

9 States Attorney's Office asking that the search warrant be

10 issued.

11 Q When district counsel sends that, does that constitute a

12 referral?

13 A It does not. It does not constitute a referral for when

14 a summons can be issued.

15 Q And did you review this search warrant for Daniel

16 Leveto?

17 A I did.

18 Q And was standard procedures followed?

19 A They were.

20 Q I think you have up there in front of you what's been

21 offered and accepted into evidence as Defendant's Exhibit 2.

22 MRS. DAVIS: (Law Clerk). It's right here.

23 THE WITNESS: Thank you.

24 Q I ask you if you recognize that document?

25 A I recognize that document as being a copy of Section

1 7602 of the Internal Revenue Code.

2 Q And was 7602 -- can you tell us the background on that
3 statute?

4 A 7602 is the section of the Internal Revenue Code that
5 authorizes various IRS employees the authority to issue
6 summonses. And there are -- there is various subparts.

7 Subpart A -- Subsection A relates to the authority
8 that defines when and under what circumstances a summons may
9 be issued.

10 Subsection B sets forth the fact that a summons can
11 be issued for purposes of investigating an offense involving
12 an internal -- involving the Internal Revenue laws.

13 Subsection C relates to certain notices that are
14 required for contacts to the third parties.

15 Q Do you know when this particular law came into effect?

16 A 7602 has been in existence for many years. I don't know
17 the exact date.

18 Subsection C, dealing with notice of contact of
19 third parties, was enacted under the authority of the Tax
20 Reform Act of 1998.

21 So, subsection C, notice of contact for third
22 parties, became effective in 1998.

23 Q And is that section -- does that require a civil

24 examiner to provide notice?

25 A What subsection C requires is, as I stated, this was

Falvo - Direct(By Ms. Calvin) 115

1 part of the Tax Reform Act of 1998 and, at that time,

2 Congress was concerned that the IRS may be making contacts

3 with third parties and it may be an invasion of the

4 taxpayer's privacy.

5 So, Congress passed subsection C. And what that

6 requires is that for civil purposes, for a civil examination

7 or for civil collection, prior to the time that the IRS can

8 go out and make a contact with a third party, whether it be

9 through summons or just a direct person-to-person contact,

10 the IRS must issue a notice to the taxpayer stating that

11 contact may be made with a third party.

12 Once that notice is issued, the IRS can then go out

13 and make contacts, but it's required to keep a list of the

14 third-party contacts that it makes. And that list is

15 required to be available to the taxpayer upon request.

16 There is certain exceptions to when the IRS is

17 required to make these -- give this notice to the taxpayer of

18 potential third-party contacts, and one of the exceptions

19 relates to a criminal investigation.

20 A Special Agent, during the course of a criminal

21 investigation, is not required to notify a taxpayer that they

22 may be making thirty-party contacts, and that's one of the

23 exceptions to this section.

24 MS. CALVIN: Your Honor, I have no further

25 questions of this witness.

Falvo - Cross

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1 CROSS-EXAMINATION

2 BY MR. LEVETO:

3 Q Okay, Mr. Falvo. Just a couple of questions.

4 Do you know who prepared the search warrant itself?

5 A The affidavit was prepared by Special Agent Robert

6 Lapina. The search warrant was prepared by somebody at the

7 U.S. Attorney's Office. I don't recall who it may have been.

8 Q Somebody at the U.S. Attorney's Office?

9 A Somebody at the U.S. Attorney's Office. One of the

10 Assistant U.S. Attorneys.

11 Q Okay. Could the rationale of the Justice Department

12 referral have anything to do with the huge difference between
13 civil and criminal discovery, in other words, the huge
14 difference in rules?

15 Could you perceive anything like that?

16 A I don't understand your question.

17 Q The difference, for instance, in the Fourth and Fifth
18 Amendment rights of an individual, okay, when they are
19 summonsed by an administrative summons versus a criminal
20 process, let's say a search warrant, if we look at the
21 differences in civil and criminal discovery, could that have
22 anything to do with the Justice Department referral?

23 And the reason I'm asking is, because perhaps it --
24 many years ago when the courts were discussing at different
25 times the good faith and bad faith, in other words, if an

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1 agent had the perception that this was criminal in nature, he
2 was supposed to abandon using administrative process, and
3 many times there was not a bright line between that.

4 So, the Justice Department referral, I do agree
5 with in 7602. I understand exactly what that is.

6 But, is that perhaps what that signifies the bright

7 line of intent?

8 A I think we need to make a distinction between civil

9 summons and what you are calling criminal summons.

10 Any summons -- we are talking about a civil

11 summons. I think, generally, what you are talking about is

12 that a summons that's issued by an exam. What we are talking

13 about generally with summonses that are issued by the IRS are

14 administrative summons, and I believe that's what we are

15 speaking to.

16 With respect to your question, prior to 1982, there

17 was quite a bit of litigation as to when a Special Agent

18 could issue a summons.

19 There was a Supreme Court case by the name of

20 LaSalle National Bank, which basically stated that it could

21 not be issued solely for criminal purposes, that the

22 institution, the IRS institution had to have something other

23 than solely criminal.

24 Congress enacted in 1982 Section 7602(b) to

25 basically address the LaSalle case and make it clear that a

1 summons could be issued solely for criminal purposes.

2 So, I think to answer your question, I believe that

3 was the rationale so that it would alleviate the litigation

4 regarding when a summons could be issued by a criminal

5 investigator.

6 Q I see. Could you please find Exhibit 3 there in the

7 Defendant's Exhibits?

8 A I have it.

9 Q Okay. What does this code section authorize, or what

10 does it pertain to?

11 A Exhibit 3 relates to Section 7609, which is entitled

12 Special Procedures for Third-Party Summons, and it relates to

13 summonses which are issued to third parties.

14 Q Would you say that it is the law concerning that?

15 A It certainly is the law.

16 Q Okay. Could you tell me your interpretation of

17 7609(c)(2)(E) and I or small one?

18 A 7609 deals with the procedures for third-party

19 summonses. And third-party summonses are generally summonses

20 which, as the name states, issued to third parties.

21 Basically, it's any summons issued to somebody other than the

22 taxpayer.

23 And (c) states that it applies to any summons

24 issued under 7602. (C)(2) provides certain exceptions.

25 And I believe you asked me to direct my attention

Falvo - Cross

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1 to (c)(2) capital E. And one of the exceptions to the

2 third-party procedures -- and maybe I should back up to

3 explain what this third-party procedures are.

4 Generally, if a summons is issued to a third party,

5 the IRS is required to give notice to the taxpayer of the

6 issuance of the summons. There are certain exceptions that

7 are listed under (c)(2).

8 (c)(2)(E)) provides that the third-party notice is

9 not required if it's being issued by a criminal investigator

10 for purposes of investigating an offense involving the

11 Internal Revenue laws and if it's served on a person who is

12 not a third-party recordkeeper.

13 So, if a Special Agent issues a summons to a third

14 party who is not a third-party recordkeeper, the Special

15 Agent is not required to provide a notice to the taxpayer, is

16 my interpretation of the section that you asked me to

17 address.

18 Q Okay. Well, it seems that 7602(c) is the notice part.

19 This seems to be that this section does not apply at all if

20 they are issued by criminal investigators. That's in two.

21 This is just an exception for the entire statute of

22 7609, is that correct?

23 A Well, it is, except there are two parts to (E).

24 The one part is that it's issued by a criminal

25 investigator and it's served on any person who is not a

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1 third-party recordkeeper. That's the exception. If it is a

2 third-party recordkeeper, the notice requirements apply.

3 If it's issued by a criminal investigator to a

4 person who is not a third-party recordkeeper, then the notice

5 requirements do not apply.

6 Q Okay. So, that No. 2 is really with No. 1?

7 A Yes, it is.

8 Q Okay. So, it's not like an addition and just other

9 examples, it's basically a part of that?

10 A E capital, or E I and double I are in the conjunctive.

11 There is an and separating those two. So, both requirements

12 must be met.

13 Q Okay.

14 MR. LEVETO: That's all I have. Thank you.

15 MS. CALVIN: Nothing further, Your Honor.

16 THE COURT: Thank you, sir.

17 THE WITNESS: Thank you.

18 (The witness was excused.)

19 MS. CALVIN: No further witnesses for the

20 government, Your Honor.

21 THE COURT: And you wanted Mr. Lapina recalled,

22 Dr. Leveto?

23 MR. LEVETO: Agent Lapina?

24 THE COURT: Yes.

25 MR. LEVETO: Yes. And procedurally, could I just

Lapina - Recross

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1 ask a question, Your Honor, of how I will proceed after I'm

2 finished with my position? Will we have, like, a closing

3 argument?

4 THE COURT: Yes.

5 MR. LEVETO: Is that how it will be structured?

6 THE COURT: Yes.

7 MR. LEVETO: Okay. Thank you, Your Honor.

8 * * * * *

9 ROBERT LAPINA, having first been duly sworn,
10 testified as follows:

11 THE COURT: Agent Lapina, you're already under
12 oath. You can just take the stand.

13 RECROSS-EXAMINATION

14 BY MR. LEVETO:

15 Q Good afternoon, Agent Lapina.

16 A Good afternoon.

17 Q I would like to have you -- let's see. That's

18 Exhibits B and C of the Government Exhibits.

19 I would like you to have that handy, if you would,
20 because we will be talking about that.

21 A B and C?

22 Q Yes. B -- it could be A and C or B and C.

23 A Basically, we would like the search warrant as it came.

24 All right.

25 Q First of all, was the affidavit attached to the search

1 warrant?

2 A Well, when I picked up the affidavit and the search
3 warrant, the items to be seized, and took it to the
4 Magistrate, they were all together in one packet.

5 But, as far as when I provided you with a copy of
6 the search warrant and the items to be seized, no, the
7 affidavit was not because it was under seal.

8 Q Yes, the affidavit was under seal. I understand.

9 And there was -- so, there was no reference to the
10 affidavit?

11 The affidavit really had nothing to do with the
12 search warrant on the day that you executed the warrant,
13 other than kind of administerial, boiler plate language that
14 the warrant was, you know, produced by probable cause from a
15 an affidavit?

16 A Well, without that affidavit, in my opinion, there would
17 have been no warrant.

18 Q What I am saying is, the warrant itself was your license
19 to come to Meadville, there were no other documents, no
20 affidavits attached, or anything like that?

21 A No. The warrant authorized us to execute the search.

22 Q Yes. Okay.

23 MR. LEVETO: Your Honor, I would like to ask leave

24 of the Court, if I could, to perhaps do something a little

25 unusual, though it's unusual to me because I'm not -- this is

Lapina - Recross

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1 not my profession.

2 I would like to elicit factual testimony from

3 Agent Lapina in a little different style. In other words,

4 even though perhaps I should be talking about myself as a

5 defendant, I would like to have a little more leeway to use

6 the first person and I.

7 THE COURT: Well, that's okay. But, you got to

8 realize you can't testify without being under oath yourself.

9 If this is, like, a form of testimony, it would not

10 be proper.

11 MR. LEVETO: Yes, Your Honor. I am not really

12 going to testify, but it is going to be kind of the form of

13 how I am going to elicit facts.

14 THE COURT: You can use the first person if you

15 want.

16 MR. LEVETO: Okay.

17 BY MR. LEVETO:

18 Q And, Agent Lapina, what I am going to ask first that you
19 identify the search warrant, and I believe that we can use
20 either B and C or A and C and know that we are talking about
21 mere images of one another since they were same so we don't
22 have to talk about specific locations.

23 And that was issued to you by Magistrate Baxter, is
24 that correct?

25 A She signed it, authorized it, yes.

Lapina - Recross

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1 Q She authorized it?

2 I would like to kind of go back because really the
3 facts and issues that I am going to be eliciting today
4 haven't really changed in eight and a half years, and I would
5 like to being back eight and a half years.

6 You were the lead agent. I was the target of the
7 investigation. At that time, I was a citizen that probably
8 wasn't as discerning as I should have been, but I moved aside
9 when you brought -- or came down with your men to execute the
10 search warrant.

11 To demonstrate some of the facts that I would like
12 to bring out today, um, I would like to -- we'll enter into
13 kind of a question answer conversation. The only thing now
14 is, I will be a citizen, but I will be a bit more discerning
15 so that's going to allow me to ask some questions to you.

16 So, I just would like the Court to bear with me a
17 little bit.

18 That morning on May 2nd, Agent Lapina, when you
19 came to the office and you and your men got out of your
20 vehicles, you came and showed me what we can call the
21 license, in other words, everything that's been said today
22 and discussed today has been leading up to you acquiring the
23 license to come across my threshold, is that correct?

24 A That morning when I arrived at your business, I
25 identified myself, told you who I was and what our purpose

Lapina - Recross

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1 was being there, and I showed you the warrant in conjunction
2 with that.

3 Q Agent Lapina, you have the warrant there and I have the
4 warrant in front of me.

5 A Okay.

6 Q Back at that morning, if we say that, we'll just kind of
7 go back to that morning. And, Agent Lapina, this is really
8 upsetting. I see that you guys have guns, and everything,
9 and flak jackets, could you tell me what's going on? What
10 did I do. What is happening?

11 A And I believe I told you that we had an investigation
12 into your income tax liabilities, as well as other related
13 violations, which would be referring to Title 18, 371
14 violations as exhibited on the warrant.

15 Q Well, Agent Lapina, I am certainly not a lawyer, but
16 thank you for giving me a copy of the warrant.

17 But, as I look at the warrant, I look at what I
18 supposedly did and I see Title 18, United States Code, 371.
19 I don't know anything about that, other than one time I read
20 in the paper a fellow that was hauling illegal liquor and
21 that statute was used and I wasn't sure just what you meant.
22 I don't see anything in here about income tax.

23 But, could you explain further, please?

24 A Well, I believe that I would have gotten into basically
25 a brief explanation, without outlining my whole case, that

1 basically the conspiracy was tied to violations of Title 26,
2 as far as income tax liabilities and I believe that you were
3 part of that conspiracy.

4 Q Well, Agent Lapina, I'm not asking -- I wouldn't have
5 been asking that day for you to outline your case.

6 I'm just seeing all of your men running around the
7 veterinary hospital, and I'm just asking you because, see, I
8 know that the Fourth Amendment requires the warrant to uphold
9 a very high position. One position is for me to know that
10 there was judicial process and you were allowed to do what
11 you were doing and that was served.

12 The second is, that I can see from the warrant and
13 I'm on notice and assured of just what you can seize and what
14 you are there for and what the criminal conduct is, what I
15 had done to bring you there so I can know things about what
16 you are doing.

17 And, of course, the third thing, the third high
18 purpose certainly is so you could, and your men -- because
19 all of your men and ladies had copies of this with them so
20 this was what was going to channel their activities as they

21 were taking property that wasn't theirs. I mean, that's a

22 very, very serious thing, not to be taken lightly.

23 So, as you would have come in and asked me this or

24 told me about this, and as your men were running around

25 securing the property, I would have asked you again what do

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1 you mean, income taxes? I don't see anything on here with

2 income taxes. And this is what I have to look at because

3 this is the license.

4 As a matter of fact, the Third Circuit and the

5 Supreme Court have just, in 2004, reiterated and

6 recapitulated the importance of this being the license for

7 you to come into my life, or an agent to come into a

8 citizen's life.

9 So, I don't know very much about 371, Agent Lapina.

10 But, it seems to me that it can mean that I've conspired to

11 do anything, and that bothers me.

12 So, we can leave that because I'm not going to be

13 able to get a lot of satisfaction because that, you see, 371

14 allows, or it can be referring to hundreds and hundreds of

15 statutes which, in and of themselves, are far too general

16 many times to even implicate specific criminal conduct, which
17 is very much required for a warrant.

18 But, in this case, 371 is even worse than the
19 statutes that it brought because it can be me planning to do
20 any of the statutes.

21 So, I would have to question you on that. And, of
22 course, the high purpose of the warrant would allow me to do
23 that. I would need to do that as a discerning citizen. Back
24 then, I was a citizen of more faith in my public service.

25 THE COURT: What's the question, Dr. Leveto?

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1 Q The question is, what is the crimes as set forth on the
2 face of the warrant where I have to know about them, where I
3 have to see them?

4 A Dr. Leveto, at the time, I would have explained to you
5 that that conspiracy violation had to do with income taxes,
6 had nothing to do with, say, conspiracy to commit any other
7 crime, like murder or robbery or anything.

8 Outside of that, I don't know what my duty to
9 explain to you is. Basically, if you would have had any

10 other questions, I would have referred you to call the U.S.

11 Attorney's Office.

12 Q The key issue, Mr. Lapina, or Agent Lapina, is that if

13 you're telling me about income tax crimes and I don't see

14 them here, then I have to wonder about the judicial approval

15 and license, because what is in your head -- again, the Third

16 Circuit and the Supreme Court have just talked about that

17 also -- what is in your head, what is in a document somewhere

18 in a courtroom, what is in a Magistrate's office, or what is

19 in a paper laying somewhere means nothing. It's the license

20 itself.

21 So, that's why I am saying that even if you wanted

22 to have explained that to me, this document would have

23 presented a severe problem with me as a citizen if I was

24 discerning enough to know it at that time.

25 We can move on from the face of the warrant.

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1 And for the record, we've talked about a great

2 number of things today that were done right and the

3 government has been very explicit about the things that were

4 done right. But, of course, my motion to suppress was

5 revolving around the things that weren't done right, and very
6 important things at that.

7 So, it's a little exciting where, we're at the
8 practice now and your people are finally calming down and
9 they are not looking for guns, or anything. And perhaps we
10 can go to Exhibit B because I know -- I know the judicial
11 officer approved 18, United States Code, 371, and I don't
12 have any idea what that means. And when you tell me, or if
13 one of your agents tell me, or if someone else tells me, the
14 face of the warrant still says this is what you are approved
15 to come for.

16 As we move to Exhibit B, Agent Lapina, I look at
17 this document and -- now I don't know what I have done wrong
18 because that's not explicit. And, again, the affidavit is
19 not attached. There is no other paperwork here. This is
20 what we have, the license.

21 As it can be said, the proof of the pudding is in
22 the eating. All of the wonderful things of the affidavit and
23 probable cause and the investigation, and all of these
24 things, they have consummated to this. These two pieces of
25 paper, actually a fourth of the two locations, this is what

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1 we have to look at, the items to be seized.

2 Agent Lapina, unfortunately I am somewhat of a pack
3 rat and I have a huge number of documents here. The hospital
4 is six thousand feet on the bottom floor and three thousand
5 feet on the top floor. There were hundreds of thousands,
6 perhaps millions of papers in it. I don't know what I've
7 done because of the first page of the warrant.

8 Now, I don't know what you want. But, perhaps the
9 most important thing, Agent Lapina, are you sure that you're
10 at the right address? I realize the number is right, but I
11 don't see anything on the items to be seized that has
12 anything specific to do with me.

13 Can you help me? Because you have all these people
14 here and they are wearing guns and they are turning my
15 clients away, and this is extremely upsetting and
16 embarrassing for me. And I need to know, because as I know
17 the Fourth Amendment and the high function of the warrant
18 necessitates you helping me to understand that, and you're
19 not taking part in the search so you need to do that.

20 If you didn't do it eight and a half years ago,

21 today you can. What do you want?

22 A What's your question again?

23 Q My question is, I know that these things on Exhibit B

24 need to relate to what's on page one, my alleged criminal

25 conduct. I don't really understand what my alleged criminal

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1 conduct is.

2 Of course, I understand that you told me what you

3 mean it is, but what the Magistrate said here, I don't

4 understand that 18 USC 371, just that statute. But, are you

5 sure you're at the right place because my name isn't even on

6 it? There are five businesses here going back over twenty

7 years. I'm storing records for many, many companies. I have

8 three to six thousand veterinary client records here,

9 records, books. I have library books. I have all kinds of

10 books. I have financial books.

11 Can you help me? Because I also know that the high

12 function of the Fourth Amendment and the search warrant is

13 so -- I know what you have the authority to take. That is

14 extremely important. So, please help me.

15 A As I stated before, the affidavit that I prepared, I
16 believed that it was indicative that beginning in 1991,
17 yourself basically either committed or attempted to commit
18 Title 26 violations.

19 Q Agent Lapina, I don't want to be impolite, but we're
20 speaking about something that's not here. It's not here for
21 me to know about. You've come into this practice, you have
22 totally upset and turned my life upside-down. Please tell
23 me, Agent Lapina, you see there is no affidavit attached to
24 this. The affidavit, although if we were going to talk about
25 probable cause and we are going to talk about other things,

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1 which we are not, this is the project of all that you did,
2 this has to stand on its own, Doe v. Groody, 2004, Third
3 Circuit case, particularity of me knowing what's in this, is
4 the touchstone of the Fourth Amendment. The affidavit could
5 not be attached because it was under seal. That is of no
6 issue to what I as a citizen have a right --

7 THE COURT: What's your question?

8 MR. LEVETO: My question is, what did this
9 authorize Agent Lapina to take?

10 THE COURT: It authorized him to take everything

11 that's on this Exhibit B.

12 BY MR. LEVETO:

13 Q For what business, Agent Lapina?

14 A Basically, for records that were going to help me prove

15 the conspiracy and the tax violations that were committed

16 relative to your income tax liabilities. Okay. Records

17 which I believe would help me reconstruct your income,

18 determine unreported tax and taxable income, and also tie you

19 into various other individuals who I believe you were

20 involved in a conspiracy with.

21 Q So, you had information to know about other individuals'

22 businesses, business names?

23 A I had information which was indicative -- I knew some of

24 the names that were involved in the scheme, per se, like

25 Center Company, Box Elder, Edge Co. I didn't pretend to know

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1 all the names at the time.

2 Q Did it ever occur to you to perhaps list any of those?

3 Again, you seem to be a man that knows an awful lot about

4 this and you did a lot of the investigation.

5 The affidavit does have factual material in it, or
6 alleged factual material.

7 MR. LEVETO: I would like to enter into evidence
8 the memorandum of meeting.

9 THE COURT: Is that marked? Give it to the agent.

10 Q Okay, Agent Lapina. If you would look at that exhibit.

11 This is the exhibit that -- would you tell me what the
12 exhibit is?

13 A This appears to be a copy of a memorandum of meeting
14 which I prepared subsequent to the pre-warrant execution back
15 on May 1st, '96.

16 Q Okay. So, this is what you brought forth to the agents
17 that were going to take part in the search?

18 A This was prepared as a result of the meeting that we
19 had.

20 Q It was prepared as a result of the meeting? Okay.

21 And on the second page, it's quite rich with
22 details. And many of them are in addition to what we would
23 find in the affidavit, is that correct?

24 A I believe you are probably referencing some of the names
25 here, Harris and Retherford, Cayman Islands. Is that what

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1 you are referring to.

2 Q Yeah. Magdan Corporation, a number of things that I
3 didn't see anywhere in the affidavit.

4 So, again, I am just saying that we have quite a
5 few rich details here, rich in details, and you even -- could
6 you tell me what you talk about with the years you gave the
7 agents some other -- a lot of information?

8 A Well, I believe it was articulated on these records
9 extending back to the late eighties to help reconstruct the
10 income going forward and evidence relative to conspiracy --
11 the conspiracy was continuing into early 1996.

12 So, I thought that the whole timeframe was relevant
13 to the execution of the search warrant.

14 Q So, you had this very well worked out. You had a number
15 of specific names. You had businesses. You had years that
16 you wanted to look for, and you had more information than was
17 on the affidavit.

18 Yet, somehow as the discerning citizen again, and
19 as I'm looking again at the license, the license doesn't have

20 any of the information on it.

21 And I would have asked you that day, or I could
22 have asked you that day, Agent Lapina, since I am kind of a
23 pack rat and this was a large building, are you going to go
24 through all of my material and all of the stuff in this
25 building and maybe take my library books, and everything,

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1 which subsequently there were numbers of books taken, but is
2 that what this was supposed to say?

3 A That search warrant basically didn't have an affidavit
4 attached to it because the affidavit was sealed. I explained
5 to you why we were there. I showed you copies of the
6 warrants.

7 We talked at length during the course of that day.

8 And if you didn't have an understanding as to why I was there
9 by the end of that day, then I don't know how else I could
10 have explained it to you.

11 Q Agent Lapina, I think we are at a misunderstanding here.
12 I am not at all accusing you of not perhaps trying to
13 explain. But, the license that you brought in showing me
14 that the Judge allowed you to actually cart away documents

15 that belonged to me and others, it's not there. That's the
16 problem I have.

17 We have, first, a statute on the face page, which
18 really from what the Judge approved, gave me no inference of
19 what was happening. Yes, I could read, IRS, CID, on your
20 coats and you could tell me all you wanted to, but the
21 Magistrate approved this and the Magistrate approved this,
22 and this doesn't tell me anything.

23 So, what I'm trying to get at is, you really -- you
24 really can't explain anything to me from this. I'm really
25 not interested in all the allegations of the affidavit

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1 because this is what made me step aside.

2 I mean, I could have looked at this, and I probably
3 would have been smarter to and said, wait a minute, we better
4 call somebody because there is something wrong here. There
5 is nothing to say that this has got anything to do with me.
6 Rich in detail, your affidavit, fairly rich in detail the
7 discussion with your fellow agents, perhaps rich in detail in
8 the minds of you --

9 THE COURT: What's your question?

10 Q My question is, is there a way that I can know all of
11 the things you are telling me you were looking for by looking
12 at this items to be seized?

13 A I don't know if you can or can't. I mean, I did my best
14 job to explain what was going on to you, and I did not
15 prepare the warrants. I explained that before. The warrants
16 would have been approved, the affidavit been read, and I was
17 sworn to it.

18 That is the best answer I can give you.

19 Q And would you call this -- we went through this before,
20 but I wanted to make sure that basically you were looking for
21 virtually all records, or this said all records?

22 A The records listed on items to be seized list, which I
23 believe would help me prove the Title 26 and the Title 18
24 violations.

25 When you say all records, you had records there

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1 relative to animals and patients, and whatever, and stuff
2 like that. I don't believe any of that stuff was touched.
3 So, I don't know where you are going with the "all records."

4 Q You downloaded the computers, the practice computers as
5 well. Those were the animal records?

6 A That was basically so we could minimize the intrusion
7 and leave your business so you could open again and we could
8 review them. We didn't want to stay there any longer than we
9 had to.

10 Q What I am talking about all records -- and correct me if
11 I'm wrong -- this items to be seized basically has, if you
12 look at the categories, when we are talking about business
13 right here, now it has basically all categories, and from
14 this list, can you see where there is any channeling of the
15 discretion of your agents by year, by name, by business, by
16 type even?

17 In other words, is there anything to say this is
18 what I am going to seize and this is not what I am going to
19 seize?

20 A Without them having been briefed and having the facts of
21 the case read to them and basically gone over everything,
22 explained about the years involved, I don't know if they
23 could or not.

24 Q So, what you are saying is, you certainly won't say yes

25 that they could, but --

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1 A I can't speak for somebody else.

2 Q But, it more came from you in talking with them than it
3 did from the Magistrate?

4 Again, we are talking about the license, so this is
5 what has to contain everything.

6 So, you're saying to me that this, in itself,
7 really kind of didn't channel their discretion?

8 A That, along with, again, the information that they had
9 been provided during the course of pre-warrant meeting
10 enabled them to carry out their assignments.

11 MR. LEVETO: No further questions.

12 THE COURT: Do you have anything further of
13 Agent Lapina?

14 MR. VORACEK: Very briefly.

15 REDIRECT EXAMINATION

16 BY MR. VORACEK:

17 Q Agent Lapina, when you executed the search warrant at
18 the beginning on May 2nd at the business, you encountered
19 Dr. Leveto, is that correct?

20 A Yes.

21 Q And you showed Dr. Leveto a copy of the search warrant

22 and a list of the items to be seized, is that correct, sir?

23 A Yes.

24 Q Did Dr. Leveto at that time ask you, agent, what are you

25 looking for?

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1 Do you recall a question to that effect?

2 A I don't recall.

3 Q Okay. At any time during your discussions with

4 Dr. Leveto that day, did Dr. Leveto indicate to you that he

5 had concerns over what the agents were going to be seizing

6 and asking further to explain what exactly you are looking

7 for at the business?

8 A I don't recall him asking me those questions, no.

9 MR. VORACEK: I have no further questions,

10 Your Honor.

11 THE COURT: Thank you, Mr. Lapina.

12 (The witness was excused.)

13 THE COURT: Okay. We'll hear argument.

14 Dr. Leveto, you first as to why you feel the warrant or the

15 evidence should be suppressed.

16 MR. LEVETO: I am sorry, Your Honor. Could I have

17 the admission of this last document?

18 THE COURT: It's admitted. Four is admitted.

19 MR. LEVETO: No. 4. And Attorney Misko and I were

20 talking, and I didn't hear the last thing you told me. I am

21 sorry.

22 THE COURT: I said go ahead and we'll have argument

23 now, and you go first, as to why the evidence should be

24 suppressed.

25 MR. LEVETO: Okay. Your Honor, the basic position

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1 that I have with the evidence is the face of the warrant. My

2 motion to suppress, I covered most of the issues in that

3 concerning the two very, very important things that the

4 warrant, in itself, must do.

5 We first have to establish that it's been made, as

6 a matter of fact today, that the affidavit and application

7 were not attached to the warrant. The judicial document, the

8 license to carry out this warrant, is contained within these

9 two pages.

10 As recently as 2004, Doe v. Groody in the Third
11 Circuit, and Groh v. Ramirez, the Supreme Court, which
12 certainly constitutes the law of the land, had two very
13 interesting cases that really recapitulated the important
14 part of the warrant. They were two cases basically about --
15 one was about qualifying -- or they were about qualified
16 immunity, but basically the principles are the same.

17 One thing was that both of these warrants in these
18 two cases had redeeming qualities. They still were ruled to
19 not have the good-faith exception and the situation or the
20 qualified immunity because the warrants failed to do the job
21 that the warrant must do.

22 For instance, in Doe v. Groody, it was somewhat of
23 an attachment mistake. Even though the affidavit was even
24 attached to the warrant, it wasn't incorporated by reference,
25 so the warrant had to stand on its own. And one of the

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1 findings were that the warrant must stand on its own.

2 It is the license to do what's going to be done

3 and, in and of itself, not what agents talk about, not a
4 document somewhere. And as Groh v. Ramirez agreed,
5 recapitulating the law surrounding that, if the affidavit is
6 not attached, that ends the matter of discussing the
7 affidavit as far as the key aspects of the warrant.

8 In Doe v. Groody, we had a situation where the
9 touchstone -- it was said that the touchstone was
10 particularity. So, when we look at particularity in the
11 warrant at bar now, we have to think of specificity which
12 breaks down into particularity and breadth.

13 We have to look at these two documents, the two
14 warrants for the house -- one for the house and one for the
15 business, and basically what we are talking about today is
16 the report card for the license itself.

17 If we speak of the breadth of these warrants, the
18 breadth is somewhat controlled or mostly controlled by the
19 statutory backdrop of the criminal conduct alleged, not the
20 criminal conduct alleged in the affidavit or what the agents
21 talked about, but the warrant itself holding the high
22 position.

23 Numerous cases, such as U.S. v. Cardwell, was just
24 a tax evasion statute. Boss(Spelled Phonetically) v.

25 Bordeguard(Spelled Phonetically), probably the only other

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1 case that I can find at least open point for the statute, the
2 statutory backdrop for the breadth of the warrant.
3 Richert(Spelled Phonetically) v. Sweeney, conspiracy and the
4 tax statute. U.S. v. Roach. These are all cases from the
5 Second Circuit, Ninth Circuit, Tenth Circuit and Eighth
6 Circuit, that speak to the fact that the breadth of the
7 warrant and the wide-ranging statutes are not
8 constitutionally acceptable and they do not provide any
9 backdrop for which agents can know what they are seizing or
10 not what they are seizing. Title 18, United States Code,
11 Section 371, happens to be one of the worst.

12 Another example is U.S. v. Leary where, in that
13 case, there were export statutes and those export statutes
14 were deemed not specific enough -- certainly more specific
15 than these -- but those were not specific enough.

16 So, when we talk about, first, the breadth of the
17 warrant, that is one of the two fatal flaws with this
18 warrant.

19 The first fatal flaw is the breadth, and the Title
20 18, USC, 371, that has -- and those cases that I enumerated
21 essentially defeated those warrants by itself.
22 The second thing that we speak about, the
23 particularity, which again the Third Circuit has just ruled
24 it as absolutely the touchstone of the Fourth Amendment must,
25 in and of itself, set forth and tell me the person that is

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1 having it executed against what's to be seized.
2 It also is supposed to channel the discretion of
3 the executing officers in helping them know what to seize.
4 This, viewed with the criminal conduct and, of course, in
5 this case that's a problem also.
6 And the third thing is to say that the Magistrate
7 has approved that. So, when we look at listings, there are a
8 great number of cases. If we look at U.S. v. Leary,
9 U.S. v. Leary was another case in the Tenth Circuit that -- I
10 believe it's the Tenth Circuit -- that basically turned on
11 the fact that the export statutes were too general. The
12 list -- which the list was far, far more specific than this,
13 and these people exported to foreign countries. They knew

14 there were difficulty with records, and things like that, but
15 the list was much more specific than this.

16 The export statutes were much more specific than
17 371, and that warrant was certainly defeated because of,
18 again, the high function of the warrant itself.

19 United States v. Kyle, a 1995 Ninth Circuit case.

20 Again, the particularity or the list of items to be seized,
21 there were fourteen items that -- the name of the company and
22 the various names of people, and we are talking about, when
23 we talk about complex, this was a 26-count indictment that
24 was returned with all kinds of tax frauds and nominee
25 companies, and all kinds of things.

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1 And within that particular warrant, the items to be
2 seized mentioned the name of the company several times. Two
3 or three of them were limited by years and they were within
4 the realm of where one might even think of severance or
5 redaction.

6 But, in that, the -- as in U.S. v. Christine in the
7 Third Circuit, the warrant smacked of a general warrant and

8 it was defeated for that. So, that was just on the

9 particularity.

10 Again, we have to keep in mind that we are dealing
11 with both of those problems in these warrants. We have the
12 statutory deficiency of not guiding, not instructing me, not
13 channeling the officers, and we have the items to be seized
14 which must stand alone, which basically is an all-records
15 search.

16 Now, all records searches have occasionally been
17 approved but, of course, we know the all-records search must
18 be a backdrop or broad that has specifically reasonable types
19 of conduct, not just a broad statute, but criminal conduct.

20 And another thing about an all-records search,
21 people have to infer somewhere, or it has to be laid out in
22 the affidavit or somewhere, that the entire operations is
23 permeated with fraud, and that was certainly not mentioned or
24 even pushed for in this case at all.

25 So, we have what I feel, Your Honor, are two fatal

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1 flaws, either one of which numerous Circuits have defeated
2 warrants. In and of themselves, either one can do it, and

3 here we happen to have two.

4 These warrants today, as we've heard testimony, can
5 really be no more helpful to me to know anything using the
6 warrants than they were eight and a half years ago. Just
7 because I wasn't discerning eight and a half years ago and
8 maybe I was so intimidated by a lot of people running around
9 with guns, and perhaps I should have asked a lot more
10 questions, that really is not germane to the issue here.

11 At the time, I'm sure I might have had questions
12 answered, but the idea of this being the license and it must
13 perform all the functions as we speak today just like it had
14 to back then, that's the important part of it.

15 Now, will I get a chance to go back or will I have
16 one time and they'll have one time?

17 THE COURT: I'll give you a brief time for
18 rebuttal, if you want, but it will have to be a rebuttal, not
19 new material.

20 MR. LEVETO: Okay. I appreciate that.

21 I believe that we have established today the facts
22 that if we stick to what is on the face of the warrant and on
23 the items to be seized, the paucity of information, this

24 becomes very obvious when it comes to from the Fourth

25 Amendment demands.

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1 Through eight and a half years of looking at search
2 warrants, I've yet to find one like this. But, the thing is,
3 since we are talking about two fatal flaws and the
4 government, on one hand, seems to want to infer that the
5 nature of the investigation was such that more information
6 was difficult to develop but, on the other hand, we are
7 extolling the virtues of all the information we've developed
8 pointing to probable cause.

9 And I don't take issue with the probable cause now,
10 but as we showed with Agent Lapina, a memorandum of the
11 meeting, it's very bothersome to me, Your Honor, that less
12 than three -- less than three hours after the Magistrate's
13 approval of the warrant, we have something, as we discussed
14 with agents, that almost make a totally different picture of
15 items to be seized.

16 It would have been nice to know some of those
17 things but, again, in these newest 2004 cases, they are
18 talking about, if the agents, just because they know about

19 things, if that's accepted as being adequate for Fourth
20 Amendment reasons, that means the neutral Magistrate has not
21 either done her job or we are not respecting the job of the
22 neutral Magistrate because it's them who have put the
23 parameters of the search, so that's not an acceptable thing.
24 It's the same thing with the 18 USC, 371. If they
25 can come in and tell me what the statutes are, how do I know

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1 that the statutes weren't twelve other ones when they are
2 telling me because this is actually what the Magistrate
3 approved?

4 So, in summary, I believe the facts are pretty
5 clear. As a matter of law, the Fourth Amendment has had more
6 paper wasted and hot breathe than all of the Bill of Rights
7 from what I understand.

8 And as a matter of law, these warrants, which must
9 stand on their own, I believe cannot do that and are
10 unconstitutional and fail miserably to do the things that
11 would allow the government to use the things seized by them
12 and the derivative use of other evidence developed from them.

13 THE COURT: All right. Ms. Calvin.

14 MS. CALVIN: Your Honor, we have briefed this issue
15 and are not going to reiterate a lot of the points that we
16 made in our brief. So, therefore, I'll just briefly discuss
17 what occurred today.

18 First of all, we note that the defendant has the
19 burden of proof in this evidentiary hearing. We also note
20 that the case law does support the fact that an affidavit may
21 set forth probable cause narrowing a search even if the
22 affidavit has not been attached or incorporated into the
23 warrant.

24 And that, therefore, the affidavit did set forth
25 sufficient probable cause and that the analysis is a totality

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1 of the circumstances analysis. There was probable cause to
2 believe that the crime had been committed and that evidence
3 of the crime could be found at the locations described and
4 the Magistrate Judge so found.

5 The affidavit set forth the agent's background,
6 which is something that could be considered. He had eight
7 years of experience. He knew that individuals and entities

8 who conduct business generally maintain a number of records
9 which he delineated.

10 He also stated that indirect method of proof might
11 have to be used, and that the investigative techniques would
12 require a large array of financial records which would be
13 located either in the business or the house. And all of the
14 listed items bear a rationale relationship to the probable
15 cause as laid out in the warrant.

16 Now, if the face of the warrant could have been
17 more specific regarding 371, but the affidavit did
18 appropriately narrow the scope of the search to permissible
19 limits. And the affidavit list things relevant to the
20 investigation which could be seized.

21 As evidence of the crime, Agent Lapina knew him to
22 be a veterinarian with an ongoing business. He reviewed tax
23 returns from 1989, or so, and saw a significant drop off in
24 adjusted gross income.

25 He saw information regarding a sale to an offshore

1 company and reviewed those returns. He received information

2 from a California private investigator regarding an
3 advertisement. He had information from a confidential --
4 from two confidential witnesses who knew the Levetos and told
5 him about statements made by the Levetos.

6 The confidential witnesses described the layout of
7 the house. There was an undercover operation in which the
8 undercover agent bought a book called Tax Free, How the Super
9 Rich Do It, from Dr. Leveto.

10 There were numerous conversations. There were mail
11 covers on the home and the business showing mail from all
12 over the country. The agent had records regarding aircraft
13 to haul -- the home vehicles. There was surveillance to see
14 if they still lived at Edgewood Drive and whether the
15 defendant was still working at his business address.

16 And given the tax returns that Daniel Leveto filled
17 out, there was more than ample information in the affidavit
18 to establish that a tax crime had been committed and that
19 evidence of the crime could be found in the locations to be
20 searched.

21 The Magistrate Judge considered the face of the
22 warrant. She considered the affidavit and the list of items
23 to be seized in determining if probable cause existed.

24 This is evidenced by the fact that she signed the
25 warrant and she signed and sealed the affidavits. We note

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1 that the accuracy of information is not contested, only the
2 fact in the briefing about the type of safe in the Leveto
3 home.

4 We also submit that the items bear a reasonable
5 relationship to the crimes, items to be seized to the crimes
6 that were alleged. The fact that it is broad does not mean
7 the fact that it is voluminous, does not means it is
8 overbroad. That this investigation was attempting to
9 reconstruct Dr. Leveto's income and expenses, assets and
10 liabilities for a five-year period.

11 The agent had noted that it might require an
12 indirect method of proof which meant that financial
13 information for years outside of the investigation would be
14 necessary to reconstruct the years under investigation.

15 And, importantly, the affidavit stated that the
16 conspiracy was believed to be ongoing at the time of the
17 application and affidavit.

18 The items that were seized did fall within the
19 ambit of the probable cause and the list of items to be
20 seized.

21 As demonstrated by testimony today, the agent was
22 careful about seizing only those items reasonably believed to
23 be authorized under the search warrant. And even if there
24 had been improperly seized items, as a general rule, only
25 improperly seized evidence should be suppressed unless there

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1 was a flagrant disregard for the terms of the warrant and the
2 items which the government intends to use against the
3 defendant, and of which the defendant and the Court has a
4 copy, were all properly seized. They all come under the
5 probable cause.

6 If, in fact, the Court should find that the warrant
7 is too broad, the agents did act in good faith, and the
8 standard for that is whether or not a reasonably,
9 well-trained officer would have known that the search was
10 illegal, despite the Magistrate's authorization. And this is
11 a question of objective reasonableness rather than subjective
12 good faith.

13 From the testimony of the officers here today, I
14 think it is evident that they had reason to believe that this
15 warrant, which had been signed by the Magistrate, with the
16 training that they had received, was a legal warrant.

17 And on the day prior to the execution of the
18 warrant, each agent was provided with a copy, they had a
19 meeting, Agent Lapina provided the seizing agents with a
20 synopsis of the overall investigation. He also advised them
21 with the details of identities of co-conspirators, that there
22 might be nominees. He was available at the search site
23 should there have been any questions.

24 The warrants and the list of items to be seized
25 were served on the defendant at the time. There are

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1 exceptions to when the exception applies, but none of those
2 apply in this particular case.

3 And I would like to just briefly touch on the
4 defendant's claims of bad faith. He briefed four. They
5 ignore internal guidelines. I think we covered that today,
6 barbaric war and execution, again, I think that was covered

7 in the hearing today, the doubtful assurances of Directive

8 52, which the Court has already ruled on, and improper hybrid

9 investigation.

10 And what this defendant insisted, that it was wrong

11 to serve administrative summonses after the search warrant,

12 and I think the evidence today showed that this position is,

13 if it's relevant at all, it is wrong. I think that the

14 testimony shows that the agents were within their authority

15 to serve administrative summons.

16 And I also found no law that suggested that the

17 good-faith standard relates to things that happen after the

18 execution of the search.

19 I would also like to point out one thing.

20 Agent Lapina never called the search warrant an all-records

21 search. That was used by the defendant, and only the

22 defendant. It never came from the witness.

23 We believe that the search was proper, that there

24 was probable cause, that it was executed in conformity with

25 the law. We believe that those items that are on the list to

1 be used were properly seized.

2 And in the event the Court finds otherwise, we
3 believe that there is good faith on the part of the agents
4 which should permit the evidence to be used in the
5 government's case in chief.

6 THE COURT: Thank you. Did you have any rebuttal,
7 Dr. Leveto?

8 MR. LEVETO: Yes, Your Honor.

9 The first thing I would like to clear up and
10 perhaps somewhat put to bed, the affidavit issue are issues
11 which we continue to spend 80 percent of our time on. Yes,
12 there are two very carefully carved-out exceptions to when
13 the affidavit, not attached to the warrant, may help the
14 warrant or narrow down the warrant.

15 As a matter of fact, that was in Doe v. Groody,
16 2004, Third Circuit. The one exception, because this is an
17 exception that I'm not even so sure that the Supreme Court
18 would rule on, but it is the law of our Circuit at this time,
19 the one exception is that if there is a clerical error in the
20 warrant, the affidavit can be used to correct that.

21 And the second carefully carved-out exception is,
22 if the warrant is facially valid, the affidavit, which is a

23 more narrowing affidavit, okay, that affidavit is what
24 actually the officers seized, like, in other words, they
25 seized within that affidavit, that affidavit can help because

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1 basically what they are doing is what U.S. v. Christine
2 discussed as redaction.

3 In other words, that can be done, but those depend
4 on facially valid warrants, which I certainly -- my position
5 today is that these are not facially valid warrants. And if
6 the whole warrant or if the entire warrant, as we have
7 demonstrated with both particularity smacks of a general
8 warrant, there can be no redaction or no help from the
9 affidavit.

10 Even more important than that, the affidavit, the
11 list within the affidavit, really is the same list that is
12 within the warrant. We were not talking about reducing or
13 narrowing the warrant by going and reading the affidavit.
14 Those types of -- that carved-out exception is basically an
15 exception, that it was listed in the affidavit transmuted on
16 to the warrant a little different and they went by the
17 affidavit, but here the same list was in the affidavit.

18 So, the affidavit really has very little to do with
19 my position. Yes, my position is somewhat narrow because
20 it's very important that the high standard of the warrant is
21 upheld.

22 So, we can't keep talking about probable cause and
23 we can't keep talking about things that are not germane to
24 the facial validity of the warrant.

25 As far as these records bearing a relationship to

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1 tax crimes, it's kind of a novel approach because of all
2 warrants, U.S. v. Cardwell, if we are talking about
3 Richert(Spelled Phonetically), or even Marvin(Spelled
4 Phonetically), one of the government's cases, where you talk
5 about cases that we are talking about, income tax, yes, the
6 same rules apply, but they know and what you find is, the
7 Court speaks of the years in question. That's extremely
8 important to have within a warrant.

9 Yes, we have some ways, yes, it relates to records.
10 Well, everything relates to your income tax records,
11 everything with a page number on it. But, it's kind of a

12 shill to use that as kind of an excuse to have, again,

13 Exhibit B with no dates, no constrict dates, no constrict

14 names, no company names, no people's names and absolutely

15 nothing on there to let me know to help guide the officers or

16 to fulfill any of the requirement with the Fourth Amendment.

17 So, that's very important.

18 As far as the Magistrate goes, I think we are a

19 little bit up in the air as to who really drafted the

20 warrant. I must say that through the litigation that I have

21 had with the government, both in the Bivens and what we have

22 had here, this is the first time today that we had a

23 U.S. Attorney said to have drafted the warrant.

24 Interestingly enough, regardless of which one it

25 is, we also have a sworn affidavit that said Agent Lapina

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1 did, but the Magistrate's approval when the warrants are

2 drafted by other people, but especially by agents,

3 Groh v. Ramirez made some very interesting statements of,

4 it's less justifiable to think that just because the

5 Magistrate signed it that she agreed with or he agreed with

6 everything in the warrant.

7 So, when the agents have an active role, as I
8 believe they did in this case, just because the Magistrate's
9 signature is there does not make it correct.

10 Not only that, in U.S. v. Kyle, a very good example
11 of the government alleging two Assistant U.S. Attorneys and a
12 Magistrate still cannot cure a warrant that's facially
13 invalid because the facial invalidity has to do with the
14 citizens and the Bill of Rights and not just to try to keep
15 the evidence that the government wants to keep. So, I think
16 it is very important to understand that.

17 And as far as not saying it's an all-records
18 search, there were at least 90 percent of all the records
19 and, as I said, Your Honor, I am kind of a pack rat, 90
20 percent of all the records that were taken, there were huge
21 numbers of boxes of records, many, many from the residence,
22 many, many from the business; many were from the business.

23 I guess you can always say that, I mean, it is hard
24 to imagine papers with numbers on them not having a
25 relationship to taxes. But, of course, we have to go back to

1 what is on the face of the warrant, no guidance, no dates, no

2 people, no business.

3 And the -- in U.S. v. Leary, the government tried

4 to say that they did not have additional information because

5 the type of crime that they were talking about made it so

6 they could only develop so much information. And just like

7 we demonstrated today, there was a lot more information

8 floating around here, information in the affidavit,

9 information in the agents' meetings, and that still could

10 have helped makes this warrant more firm.

11 And the last thing I would like to talk about.

12 When we talk about the Leon, good-faith exception, I believe

13 that the fourth good-faith exception to the good-faith rule,

14 is that a warrant that is so facially invalid that no

15 reasonable officer could depend on it. That is where I'm

16 alleging this suppression, the basis of this suppression.

17 Both factors of this warrant are woefully

18 inadequate. Either one has been pretty consistently shot

19 down by the Circuit, by all the Circuit Courts of Appeals.

20 We have seen many, many warrants far better than this. But,

21 with the two of them, the two fatal flaws, the lack of a

22 specific criminal conduct and the lack of particularity, it's

23 unconscionable to think that a reasonable officer could look
24 at this and try to execute it because when they picked up any
25 piece of paper, any book, including greeting cards, library

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1 books, children's medical records, psychological records, if
2 they picked up anything, they could seize it.

3 I made a mistake at one point in the litigation, I
4 think it was in the Bivens, where I said that they
5 overstepped the warrant. And I probably was in -- I was
6 mistaken because this warrant is almost impossible to
7 overstep.

8 It really does take into consideration that you can
9 take everything, correspondence with anybody that a financial
10 relationship exists.

11 Well, that really narrows it down to everything
12 with a number on it; books, records ledgers.

13 So, what I am saying here is, this is precisely the
14 kind of warrant that the fourth exception in Leon talks
15 about, when it's facially so invalid, both prongs of
16 specificity fail miserably.

17 And the last thing I would like to say, it's often
18 been talked about the complexity of this investigation.
19 There is a Third Circuit Court case -- and I think
20 it's very interesting. It actually comes out of the District
21 of New Jersey, U.S. v. Gawrysiak, which is unpublished in the
22 Third Circuit, but it was affirmed. And here is a case that,
23 when we talk about complexity, one can read the whole hearing
24 and the suppression hearing and what they were trying to work
25 at, and the Third Circuit was very, very clear when they

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1 talked about impermissibly general.
2 And, of course, all the things that we have talked
3 about with the other Circuits came into play. But, the key
4 thing is in U.S. v. Gawrysiak, it was alleged that this
5 warrant was too general. And the Third Circuit had four
6 holdings.
7 And these four holdings were, one, in this warrant,
8 it authorized the seizure of evidence on four specific
9 enumerated crimes.
10 My warrant miserably fails there.
11 Number two. The crimes were specifically committed

12 by specifically enumerated individuals or their attorneys.

13 I don't have a hint of anything like that here.

14 Three. The encompassed crimes committed can

15 specify three-year time periods in the timeframe period.

16 And, four. It only allows the evidence pertaining

17 to sixteen individuals or entities named in the affidavit as

18 perpetrators, intermediaries or victims.

19 This warrant certainly was -- affirmed this being a

20 good warrant, but it's interesting to note that, again,

21 looking at the touchstone of the Fourth Amendment, you can

22 tell that this is the Third Circuit's opinion and action as

23 far as what the warrant must do.

24 When I look at those things that U.S. v. Gawrysiak

25 affirmed, it's a very good thing -- it's very pertinent and

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1 it's indistinguishable from if we look at my list and see

2 that none of those things occurred.

3 So, it appears to me that no matter how we talk

4 about the affidavit, the agents' meetings, what was in the

5 agents' minds, what was known and not known, what was secret

6 and not secretive, the warrants, the license, meet both

7 failures that we see, that even one can destroy it.

8 So, in light of that, I'm urging this Court to

9 suppress the derivative use of the evidence as well as the

10 evidence itself.

11 THE COURT: We are going to deny the motion. I

12 think much of what Dr. Leveto argues today and seeks today is

13 information to which a defendant in a criminal case is

14 entitled at some point, but not at the time the search

15 warrant is served.

16 What he talks about today he is certainly entitled

17 to with respect to a criminal case, but that comes later.

18 We had here an undercover investigation for two

19 years, 1994 to 1996, I don't know, about two years, leading

20 up to the issuance of the search warrant.

21 The agent then served or filed with the Magistrate

22 a twenty-eight page affidavit, goes into, I would say,

23 excruciating detail about the results of what, to that point,

24 had been the investigation of the affairs of Dr. Leveto.

25 Income tax cases are different from searching a

1 house for some kind of contraband, like a gun or drugs, or
2 that kind of thing.

3 An income tax case necessarily involves paperwork,
4 a paper chase, and you can't identify papers very well
5 without looking at them. And I think what Dr. Leveto would
6 be asking the agent to do in this kind of a situation would
7 be simply impossible for the agent to accomplish.

8 So I don't think we can agree that the warrant was
9 too broad in listing the items which the agents were looking
10 for.

11 Now, he's got a point about the years involved, and
12 that, but the agents had had a meeting before the search in
13 which Agent Lapina says he gave verbal instructions to the
14 agents about what it was that they should be looking for.

15 As far as this 18, United States Code, Section 371,
16 conspiracy is, of itself, a crime. Conspiracy carries -- a
17 conspiracy to violate the laws or to defraud the United
18 States carries with it its own penalty.

19 If a person is charged with a conspiracy to violate
20 the income tax laws, and then there is a second count that
21 says how the income tax laws were violated, the defendant is

22 faced with penalties attaching to two separate crimes, the
23 crime of conspiracy and the crime of violation of the income
24 tax laws.

25 So, I am satisfied that the warrant, while broad,

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1 was necessarily broad under the circumstances of this case.

2 I also feel that justice was done with respect to
3 the issuance of the warrant and the manner in which it was
4 carried out by the agents.

5 So, we are going to deny the motion to suppress.

6 Now, we did have a meeting last week with counsel
7 and Dr. Leveto present, and Mr. Misko, his standby counsel,
8 was present on the telephone while we had that meeting, and I
9 am going to have a brief recess now and let you fellows talk
10 about where we are going to go from here on that.

11 (Court recessed at 3:25 p.m.)

12 (Court reconvened at 3:40 p.m.)

13 THE COURT: Be seated, please.

14 Okay. As I said last week when we met, there
15 was -- we discussed a plea on the part of Dr. Leveto. And
16 what have we come up with on that?

17 Mr. Misko, do you want to speak to that, or

18 Dr. Leveto himself?

19 MR. LEVETO: Well, I would like a little bit of
20 time. I would like to schedule something as soon as
21 possible, but I think Mr. Misko, the first opportunity he has
22 to be here is on the eighth in the afternoon, but we have to
23 know your schedule, Your Honor.

24 And I also am going to address some changes in
25 circumstances, and I would like to file a motion and perhaps

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1 we could talk about that then also regarding detention.

2 THE COURT: Okay. Kathleen, do we know what we are
3 doing the eighth? Okay, the eighth is okay. So, we'll
4 figure on hearing this on the -- what time, Mr. Misko? I
5 mean, is the morning okay?

6 MR. MISKO: I have a hearing at nine; late morning,
7 early afternoon.

8 THE COURT: You have a hearing in Pittsburgh?

9 MR. MISKO: Butler.

10 THE COURT: Butler. Well, that's part way here.

11 Why don't we set it for one o'clock on Monday, the eighth.

12 MR. LEVETO: Your Honor, I have a question. I have
13 kind of a change in a family member's health and I have some
14 issues that I am going to be asking you.

15 Should I motion you or brief you so we can talk
16 about them at that time regarding detention as far as change
17 in circumstances?

18 THE COURT: That would be the best time to do it.

19 MR. LEVETO: Okay.

20 THE COURT: Okay. Court is in recess until
21 November 8th.

22 (Court adjourned on Thursday, October 28th, 2004,
23 at 3:45 p.m.)

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I certify that the forgoing is a correct transcript

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from the record of proceedings in the above-entitled matter.

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S/Michael D. Powers

Michael D. Powers

Official Reporter

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7 *****NOT CERTIFIED WITHOUT ORIGINAL SIGNATURE*****

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